

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

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U.S. DISTRICT COURT

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JOHN WAUDBY, individually and on behalf of  
all others similarly situated,

Class Plaintiff,

v.

VERIZON WIRELESS SERVICES, LLC and  
CELLCO PARTNERSHIP, d/b/a VERIZON  
WIRELESS,

Defendants.

Case No.:

JURY TRIAL DEMANDED

**CLASS ACTION COMPLAINT**

Plaintiff John Waudby, individually and on behalf of others similarly situated, complains against defendants Verizon Wireless Services, LLC and Cellco Partnership d/b/a Verizon Wireless ("Verizon" or "Defendant"), upon personal knowledge as to himself and his own acts, and as to all other matters upon information and belief, based upon, *inter alia*, the investigation made by his attorneys, as follows:

**I. OVERVIEW OF THE ACTION**

1. Plaintiff brings this action individually and on behalf of a proposed class of persons who were injured by Verizon's business acts and practices.

2. The proposed class consists of persons and entities who had Verizon accounts and were charged an "Early Termination Fee" (also referred to herein as "ETF") when they cancelled their Verizon wireless service, as defined more fully herein.

3. Through a uniform scheme and common course of conduct, Verizon charged Plaintiff and other Verizon customers an ETF of \$175.00 if they cancelled their wireless service at any time after a trial period but before the end of the "service plan" term, regardless of their

reason(s) for cancellation.

4. As alleged herein, Verizon's ETF gives rise to Plaintiff's claims for violation of: (1) the Federal Communications Act; (2) New Jersey Consumer Protection Act, (3) alternatively, violations of the substantially similar laws of certain states, and (4) Declaratory Relief pursuant to 28 U.S.C. § 2201.

## **II. JURISDICTION AND VENUE**

5. This Court has jurisdiction pursuant to 28 U.S.C. § 1332(d). This is a class action involving more than 100 class members. A member of the class is a citizen of a state different from defendant, and the amount in controversy, in the aggregate, exceeds the sum of \$5,000,000.00 exclusive of interest and costs.

6. Venue is proper under 28 U.S.C. § 1391(c), as Defendant maintains its principal place of business in Bedminster, New Jersey, and regularly transacts business here.

## **III. PARTIES**

7. Plaintiff John Waudby is a natural person and resident of New York who was charged an ETF.

8. Defendants Verizon Wireless Services, LLC and Cellco Partnership, d/b/a Verizon Wireless are both Delaware corporations with principal places of business in Bedminster, New Jersey.

## **IV. FACTS**

### **Early Termination Fees**

9. Verizon requires its customers to abide by a wireless customer service agreement ("Agreement").

10. Verizon distributes the Agreement on preprinted standardized forms that are not subject to modification or negotiation, or, if the consumer is shopping on the Internet, through read-only screens that cannot be modified by users; Verizon presents these Agreements to prospective subscribers on a “take it or leave it” basis. These Agreements are therefore contracts of adhesion.

11. Each of Verizon’s Agreements includes, as a term and condition of service, a purported liquidated damages clause that requires subscribers to pay early termination penalties if for any reason they seek to terminate service before the expiration of the contract period, which is typically one or two years.

12. These early termination penalties are also due if Verizon terminates the agreement for, among other things, nonpayment by the customer.

13. The specified penalty for customers terminating service before the expiration of a specified term is typically \$175.00 per line, as demonstrated from the following clause in the “Verizon Terms and Conditions”:

EARLY TERMINATION FEE: If you select any one (1) or two (2) year Calling Plan and cancel Service during your Minimum Term, then you are responsible for a \$175.00 Early Termination Fee in addition to all other outstanding charges on your account. ...

14. The early termination penalty does not vary during the term of the contract. The customer is required to pay the full penalty whether he or she cancels fifteen calendar days into the contract or one day before the date it is scheduled to expire.

15. The customer must pay the early termination penalty even if cancellation is the result of non-existent, poor, or otherwise inadequate service provided by Verizon.

16. The early termination is a penalty, and, in fact, is not a reasonable measure of the anticipated or actual loss that the termination causes Verizon.

17. Apparently, the actual purpose of the early termination fee is to recoup equipment costs – an admission recently made by the international association that represents the wireless communication industry, the Cellular Telecommunications and Internet Association (CTIA) – of which Verizon is a member – in a filing to the FCC: “The longer assured commitment under these term contracts enables the carriers *to reduce handset prices* at the inception of the term and to reduce monthly service charges, based on the expectation that initial and ongoing costs can be recouped gradually over time.”<sup>1</sup>

18. Verizon therefore disguises a fee to recover equipment costs as a liquidated damages clause, which is an illegal penalty when the damages are readily calculable. The termination fee is not actually designed to compensate Verizon for any damages arising from the termination, but has the effect and purpose of locking in the subscribers of Verizon and discouraging them from switching to competing services (what is known as “churn”).

19. Verizon’s early termination penalty discourages competition in the wireless industry because consumers cannot freely shop around for the best wireless service.

20. The early termination penalty is not a rate charged by Verizon, nor is it part of Verizon’s rate structure, nor is it a rate component charged for any “service.” It is part of the “Terms and Conditions” and can only be categorized as an illegal penalty provision.

21. The termination penalty imposed by Verizon is an illegal and void liquidated damages provision. It constitutes an unjust, unconscionable, unlawful, unfair and deceptive practice under all applicable statutes.<sup>2</sup>

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<sup>1</sup> “Petition of the Cellular Telecommunications and Internet Association for an Expedited Discovery Ruling,” page 15, March 15, 2005, FCC, WT-05-194.

<sup>2</sup> At the Yankee Group wireless conference in New York in June of 2006, Verizon’s Chief Executive, Denny Strigl, announced that Verizon would pro-rate its termination fees, stating “complaints on this issue [ETFs] [are] the single largest that our customers have. . . .It’s a legitimate complaint: If they leave in month one or month 23, [customers] pay the same charge.” Strigl further referred to ETFs as a “black eye” on the cellular industry. *Verizon to ease termination fees*, Bruce Myerson, June 28, 2006, <http://www.msnbc.msn.com/id/13600607/>

22. Furthermore, Plaintiff is informed and believes that any request for a change in service can only be granted with a renewal of the initial contract term, thereby extending the contract an additional year (or two years) as of the date of the modification. This required extension further discourages Plaintiff and Class members from changing their service to obtain lower prices or otherwise modify their plan because it reinstates early termination penalties.

23. Plaintiff is informed and believes that many if not the majority of Verizon's customers are locked into Verizon's customer service agreements beyond the initial one- or two-year period, at which point Verizon no longer needs to recover alleged customer acquisition costs.

24. Plaintiff is informed and believes that Verizon's early termination penalty provisions have permitted Verizon to collect revenues and generate enormous profits as a result of: (a) the payment of the early termination penalties; and (b) the revenue generated by tethering Plaintiff to Verizon's service for at least the original contract period, and, in most cases, for additional years.

25. Plaintiff Waudby began using Verizon wireless cellular service in 2002. Upon upgrading his phone in February 2006 (for which Verizon forced him to sign a new contract), he was unable to use the phone due to repeated dropped calls. Plaintiff made multiple (more than 50) calls to Verizon for assistance in resolving this lack of service. When Verizon failed to address Plaintiff's lack of service, he cancelled his subscription. Notwithstanding his reasons for cancellation, Verizon charged Plaintiff a \$175.00 "early termination fee."

#### **V. NO ENFORCEABLE AGREEMENT TO ARBITRATE**

26. Defendant has inserted clauses into its "terms and conditions" that purport to impose mandatory arbitration. However, these terms and conditions constitute contracts of adhesion insofar as they are drafted entirely by the Defendant on a take-it-or-leave-it basis in a setting in which disputes between the contracting parties predictably involve small amounts of damages. Plaintiff had neither the bargaining power nor the ability to change the contractual

terms. Defendant relies on its purported mandatory arbitration provisions to shield it from civil liability. In practice, the waiver virtually immunizes the defendants from responsibility for their own wrongful conduct. Such waivers are unconscionable under the law of this Circuit and New Jersey state law, and should not be enforced.

27. The mandatory arbitration provision in contracts like Verizon's contracts have repeatedly been held unenforceable. *See, e.g., Muhammad v. County Bank of Rehoboth Beach, Delaware*, 912 A.2d. 88, 2006 WL 2273448 (N.J., August 9, 2006); *Ting v. AT&T Corp.*, 319 F.3d 1126 (9th Cir. 2002), *cert. denied*, 540 U.S. 811 (2003); *Discover Bank v. Superior Court*, 36 Cal.4th 148 (2005); *Kinkel v. Cingular*, No. 100925, 223 Ill.2d 1, 2006 WL 2828664 (October 5, 2006); compare *Zobrist v. Verizon Wireless*, 354 Ill.App.3d 1139 (Ill. 5<sup>th</sup> Dist., 2004) (compelling class-wide arbitration).

28. The delay incurred by these motions imposes unnecessary and burdensome costs on customers who assert meritorious claims, and ultimately discourages customers from pursuing their legal rights. *See, e.g., Ting*, 319 F.3d 1126.

29. On information and belief, Verizon has never used arbitration to resolve its own claims against a customer. Instead, it has resolved scores of claims against customers by assigning them to collection agencies who then pursue a variety of means to resolve them, including filing lawsuits, but not arbitration.

## **VI. CLASS ACTION ALLEGATIONS – EARLY TERMINATION FEE (ETF) CLASS**

### **A. Definition of the Class**

30. Plaintiff brings all claims herein as class claims pursuant to Fed. R. Civ. P. 23. The requirements of Fed. R. Civ. P. 23(a), (b)(2) and (b)(3) are met with respect to the class defined below, of which Plaintiff is a member (the “ETF Class”):

All persons and entities who Verizon charged an “Early Termination Fee.”

**B. Numerosity**

31. At this time, Plaintiff does not know the exact size of the ETF Class; however, due to the nature of the trade and commerce involved, Plaintiff believes that ETF Class members are so numerous that joinder of all members is impracticable. The number of class members can be determined through appropriate discovery.

**C. Commonality**

32. There are questions of law or fact common to the ETF Class, including at least the following:

- (a) Whether the ETF is unjust, unreasonable and/or unlawful;
- (b) Whether Defendant’s conduct violated the Federal Communications Act;
- (c) Whether Defendant charged ETF Class members a \$175.00 “Early Termination Fee”;
- (d) Whether the ETF is unjust, and/or unlawful;
- (e) Whether Defendant’s conduct constitutes deceptive, unfair and/or oppressive conduct;
- (f) Whether Defendant was unjustly enriched;
- (g) Whether Defendant intended the ETF to subsidize the cost of cellular telephones purchased by Plaintiff and the ETF Class from Defendant;
- (h) Whether Declaratory Relief is appropriate; and
- (i) Whether Plaintiff and the ETF Class have been damaged, and if so, the proper measure of such damages.

**D. Typicality**

33. Plaintiff has the same interests in this matter as all other members of the ETF class, and his claim is typical of all members of the class.

**E. Adequacy**

34. Plaintiff is committed to pursuing this action and has retained competent counsel experienced in the prosecution and successful resolution of consumer class actions. Plaintiff will fairly and adequately represent the interests of ETF Class members and does not have interests adverse to the ETF Class.

**F. The Prerequisites of Rule 23(b)(2) are Satisfied**

35. The prerequisites to maintaining a class action for injunctive and equitable relief pursuant to Fed. R. Civ. P. 23(b)(2) exist as Defendant has acted or refused to act on grounds generally applicable to the ETF Class thereby making appropriate final injunctive and equitable relief with respect to the ETF Class as a whole.

36. The prosecution of separate actions by members of the ETF Class would create a risk of establishing incompatible standards of conduct for Defendant. For example, one court might decide that the challenged actions are illegal and enjoin them, while another court might decide that those same actions are not illegal. Individual actions may, as a practical matter, be dispositive of the interest of the ETF Class, who would not be parties to those actions.

37. Defendant's actions are generally applicable to the ETF Class as a whole, and Plaintiff seeks, *inter alia*, equitable remedies with respect to the ETF Class as a whole.

38. Defendant's systemic policy and practices make declaratory relief with respect to the ETF Class as a whole appropriate.

**G. The Prerequisites of Rule 23(b)(3) are Satisfied**

39. This case satisfies the prerequisites of Fed. R. Civ. P. 23(b)(3). The common questions of law and fact enumerated above predominate over questions affecting only individual members of the ETF Class, and a class action is the superior method for fair and efficient adjudication of the controversy. The likelihood that individual members of the ETF Class will prosecute separate actions is remote due to the extensive time and considerable expense necessary to conduct such litigation, especially in view of the relatively modest amount of monetary, injunctive and equitable relief at issue for each individual ETF Class member. This action will be prosecuted in a fashion to ensure the Court's able management of this case as a class action on behalf of the ETF Class defined above.

**COUNT I**  
**(Violation of § 201 of the Federal Communications Act)**

40. Plaintiff repeats and realleges the allegations of the prior paragraphs as if fully set forth herein.

41. At all times relevant hereto there was in full force and effect the Federal Communications Act of 1934 ("FCA"), 47 U.S.C. § 201 *et seq.*

42. Verizon is a common carrier engaged in interstate or foreign communication by wire or radio, and is subject to the common carrier regulation set forth at 47 U.S.C. § 201, *et seq.*

43. Verizon's termination penalties, described above, are charges and/or practices in connection with communication service, subject to the requirements of 47 U.S.C. § 201(b).

44. Section 201(b) of the FCA provides that all charges, practices, classifications, and regulations for and in connection with communication service, shall be just and reasonable. 47 U.S.C. § 201(b).

45. Verizon's ETFs are unjust, unreasonable and/or unlawful under Section 201(b).

46. As a direct and proximate result of Defendants' violation of 47 U.S.C. §§ 201(b) described above, Plaintiff and the Class have been damaged.

WHEREFORE, Plaintiff, individually and on behalf of the Class of persons described herein, pray for an Order as follows:

- A. Finding that this action satisfies the prerequisites for maintenance as a class action set forth in Fed. R. Civ. P. 23(a), (b)(2) and (b)(3), and certifying the Class defined herein;
- B. Designating Plaintiff as representative of the Class and counsel as Class counsel;
- C. Entering judgment in favor of Plaintiff and the Class and against Defendant;
- D. Awarding Plaintiff and Class members their individual damages and attorneys' fees and allowing costs, including interest thereon; and
- E. Granting such further relief as the Court deems just.

**COUNT II**  
**(Violation of New Jersey Consumer Fraud Act)**

47. Plaintiff repeats and realleges the allegations of the prior paragraphs as if fully set forth herein.

48. Plaintiff brings this claim pursuant to the New Jersey Consumer Fraud Act (NJCFA), which was enacted and designed to protect consumers against unfair, deceptive, or fraudulent business practices. *See, e.g.,* N.J. Rev. Stat. § 56:8-1 *et seq.*

49. N.J. Rev. Stat. § 56:8-2 provides:

"The act, use or employment by any person of any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing, concealment, suppression, or omission of any material fact . . . whether or not any person has in fact been misled, deceived or damaged thereby, is declared to be an unlawful practice"

50. At all relevant times, Plaintiff, Class members and Defendant were “persons” within the meaning of N.J. Rev. Stat. § 56:8-1.

51. The imposition of an ETF is an act or practice in the conduct of trade or commerce.

52. The imposition of an ETF impacts the public interest.

53. The imposition of an ETF is deceptive because Defendant describes it as a liquidated damages clause and states that its damages are difficult or impracticable to calculate, when, in fact, it is a charge to recover the cost of equipment, and Defendant’s damages are in fact quite simple to recover.

54. The imposition of an ETF is unfair because it is imposed even when Defendant fails to properly provide class members with the wireless cellular services for which they contracted; while class members are always at risk of breach, Defendant is never at risk of breach.

55. Defendant’s ETF is an illegal penalty and is therefore unfair because it offends public policy; is so oppressive that the consumer has little alternative but to submit (*e.g.*, Verizon turns “delinquent” accounts over to collections and has one’s credit history negatively impacted); and causes consumers substantial injury.

56. Plaintiff and the ETF Class suffered an economic injury as a direct and proximate result of Defendant’s conduct, including but not limited to the amount of the ETFs improperly charged.

57. Defendant has committed deceptive acts or practices within the meaning of the Act by engaging in the acts and practices alleged herein.

WHEREFORE, Plaintiff, individually and on behalf of the ETF Class of persons described herein, pray for an Order as follows:

- A. Finding that this action satisfies the prerequisites for maintenance as a class action set forth in Fed. R. Civ. P. 23(a), (b)(2) and (b)(3), and certifying the ETF Class defined herein;
- B. Designating Plaintiff as representative of the ETF Class and counsel as ETF Class counsel;
- C. Entering judgment in favor of Plaintiff and the ETF Class and against Defendant;
- D. Awarding Plaintiff and ETF Class members their individual damages and attorneys' fees and allowing costs, including interest thereon; and
- E. Granting such further relief as the Court deems just.

### COUNT III

#### (Violation of Substantially Similar Consumer Fraud Statutes of Certain States)

58. Plaintiff repeats and realleges the allegations of the prior paragraphs as if fully set forth herein.

59. This Count is brought in the alternative to Count II. The ETF Class is modified, for this count only and pending discovery, to include individuals and entities with cellular numbers or services in New York, where Plaintiff resides, and the substantially similar statutes of specific sister states,<sup>3</sup> all of which were enacted and designed to protect consumers against unfair, deceptive, or fraudulent business practices. *See, e.g.*, N.J. Rev. Stat. § 56:8-1 *et seq.*

<sup>3</sup> The claims of New York citizens (such as Plaintiff) are brought under the New York Consumer Fraud Act. N.Y. Gen. Bus. Law. § 349 *et seq.* The claims of non-New York citizens are brought under the consumer protection statute(s) of their respective states. *See* Ala. Code § 8-19-1 *et seq.* (Alabama); Alaska Stat. § 45.50.471 *et seq.* (Alaska); Ariz. Rev. Stat. Ann. § 44-1521 *et seq.* (Arizona); Ark. Code Ann. § 4-88-101 *et seq.* (Arkansas); Cal. Bus. & Prof. Code § 17200 *et seq.*, and Cal. Bus. & Prof. Code § 17500 *et seq.* (California); Colo. Rev. Stat. § 6-1-105 *et seq.* (Colorado); Conn. Gen. Stat. § 42-110a (Connecticut); Del. Code Ann. Tit. 6, § 2511 *et seq.* (Delaware); D.C. Code Ann. § 28-3901 *et seq.* (District of Columbia); Fla. Stat. Ann. § 501.201 *et seq.* (Florida); Ga. Code Ann. § 10-1-390 *et seq.* (Georgia); Haw. Rev. Stat. § 481A-1 *et seq.* and Haw. Rev. Stat. § 480-1 *et seq.* (Hawaii); Idaho Code § 48-601 *et seq.* (Idaho); 815 ILCS § 505/1 *et seq.* (Illinois); Kan. Stat. Ann. § 50-623 *et seq.* (Kansas); Ky. Rev. Stat. § 367.110 *et seq.* (Kentucky); La. Rev. Stat. Ann. § 51:1401 *et seq.* (Louisiana); Me. Rev. Stat. Ann. Tit. 5, § 205-A *et seq.* (Maine); Md. Com. Law Code Ann. § 13-101 *et seq.*, Md. Com. Law Code Ann. § 13-301 *et seq.*, Md. Com. Law Code Ann. § 13-408 *et seq.* (Maryland); Mass Gen. L. ch. 93A, § 1 *et seq.* (Massachusetts); Mich. Stat. Ann. § 445.901 *et seq.*, Mich. Stat. Ann. § 19.418(1) *et seq.* (Michigan); Minn. Stat. § 325F.68 *et seq.*, Minn. Stat. § 8.31 (Minnesota); Miss. Code Ann. § 75-24-3 *et*

60. The imposition of an ETF is an act or practice in the conduct of trade or commerce.

61. The imposition of an ETF impacts the public interest.

62. The imposition of an ETF is deceptive because Defendant describes it as a liquidated damages clause and states that its damages are difficult or impracticable to calculate, when, in fact, it is purportedly an internal charge to recover equipment costs, and Defendant's damages (if any) are in fact quite simple to recover.

63. The imposition of an ETF is unfair because it is imposed even when Defendant fails to properly provide class members with the wireless cellular services for which they contracted; while class members are always at risk of breach, Defendant is never at risk of breach.

64. Defendant's ETF is an illegal penalty and is therefore unfair because it offends public policy; is so oppressive that the consumer has little alternative but to submit (*e.g.*, Verizon turns "delinquent" accounts over to collections and has one's credit history negatively impacted); and causes consumers substantial injury.

65. Plaintiff and the ETF Class suffered an economic injury as a direct and proximate result of Defendant's conduct, including but not limited to the amount of the ETFs improperly charged.

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*seq.* (Mississippi); Mo. Rev. Stat. § 407.010 *et seq.* (Missouri); Mont. Code Ann. § 30-14-101 *et seq.* (Montana); Neb. Rev. Stat. § 59-1601 *et seq.* (Nebraska); Nev. Rev. Stat. § 41.600 and Nev. Rev. Stat. § 598.0903 *et seq.* (Nevada); N.H. Rev. Stat. Ann. § 358-A:1 *et seq.* (New Hampshire); N.J. Rev. Stat. § 56:8-1 *et seq.* (New Jersey); N.M. Stat. Ann. § 57-12-1 *et seq.* (New Mexico); N.C. Gen. Stat. § 75-1 *et seq.* (North Carolina); N. D. Cent. Code § 51-15-01 *et seq.* (North Dakota); Ohio Rev. Code Ann. § 1345.01 *et seq.* (Ohio); Okla. Stat. Tit. 15, § 751 *et seq.* (Oklahoma); Ore. Rev. Stat. § 646.605 *et seq.* (Oregon); Penn. Stat. § 201-1 *et seq.* (Pennsylvania); R.I. Gen. Laws § 6-13.1-1 *et seq.* (Rhode Island); S.C. Code Ann. § 39-5-10 *et seq.* (South Carolina); S.D. Codified Laws Ann. § 37-24-1 *et seq.* (South Dakota); Tenn. Code Ann. § 47-18-101 *et seq.* (Tennessee); Tex. Bus. & Com. Code Ann. § 17.41 *et seq.* (Texas); Vt. Stat. Ann. Tit. 9, § 2451 *et seq.* (Vermont); Va. Code Ann. § 59.1-196 *et seq.* (Virginia); Wash. Rev. Code § 19.86.010 *et seq.* (Washington); W. Va. Code § 46A-6-101 *et seq.* (West Virginia); and Wyo. Stat. § 40-12-101 *et seq.* (Wyoming).

66. Defendant's conduct as alleged herein violates the substantially similar unfair and deceptive acts and practices laws of other states.

WHEREFORE, Plaintiff, individually and on behalf of the ETF Class of persons described herein, pray for an Order as follows:

- A. Finding that this action satisfies the prerequisites for maintenance as a class action set forth in Fed. R. Civ. P. 23(a), (b)(2) and (b)(3), and certifying the ETF Class defined herein;
- B. Designating Plaintiff as representative of the ETF Class and counsel as ETF Class counsel;
- C. Entering judgment in favor of Plaintiff and the ETF Class and against Defendant;
- D. Awarding Plaintiff and ETF Class members their individual damages and attorneys' fees and allowing costs, including interest thereon; and
- E. Granting such further relief as the Court deems just.

**COUNT IV**  
**(Declaratory Relief Pursuant To 28 U.S.C. § 2201)**

67. Plaintiff incorporates all prior paragraphs as if fully set forth herein.

68. There is an actual controversy between Verizon and all members of the ETF concerning the enforceability of the early termination fee provisions contained in the Verizon customer service agreements to which they are all parties.

69. Pursuant to 28 U.S.C. § 2201 this Court may "declare the rights and legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought."

70. Plaintiff is an interested party who seeks a declaration of his and the class' rights and legal relations vis-à-vis Verizon with regard to early termination fee provisions contained in the Verizon customer service agreements to which they are all parties. Specifically, Plaintiff seeks a declaration that such provisions are unlawful and unenforceable.

WHEREFORE, Plaintiff, individually and on behalf of the ETF Class of persons described herein, pray for an Order as follows:

- A. Finding that this action satisfies the prerequisites for maintenance as a class action set forth in Fed. R. Civ. P. 23(a) and (b)(2), and certifying the ETF / Injunction Class defined herein;
- B. Designating Plaintiff as representative of the Class and counsel as ETF Class counsel;
- C. Entering judgment in favor of Plaintiff and the ETF Class and against Defendants;
- D. Awarding Plaintiff and ETF Class members their individual damages and attorneys' fees and allowing costs, including interest thereon; and
- E. Granting such further relief as the Court deems just.

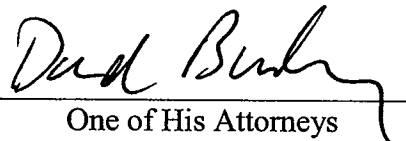
**VIII. JURY DEMAND**

Plaintiff demands trial by jury on all issues so triable.

DATED: January 25, 2007

Respectfully submitted,

**JOHN WAUDBY,**  
**Class Plaintiff,**

  
One of His Attorneys

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