

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE
MR. JUSTICE MORGAN

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TUESDAY, THE 2nd DAY
OF FEBRUARY 2021

BETWEEN:

AVRAHAM WELLMAN

Plaintiff

- and -

**TELUS COMMUNICATIONS COMPANY, TELE-MOBILE COMPANY and
TELUS COMMUNICATIONS INC.**

Defendants

Proceeding under the *Class Proceeding Act, 1992*

**ORDER
(Varying Certification Order Dated November 25, 2014)**

ON CONSENT of the Plaintiff and the Defendants, paragraphs 1 (b), 1(f), 2, 4, 5, 6(c) and 6(f) of the Order of Conway J. dated November 25, 2014 (attached hereto as Schedule A) are varied as set out below:

1. **THIS COURT ORDERS** that, for the purposes of this Order, the following definitions shall apply:

- a) **“Class Counsel”** means *Rochon Genova LLP* and Eli Karp;



- b) **“Class”** means:
- All individuals resident in Ontario who, at any time during the Class Period, were customers of the Services on either a Pre-Paid Plan or a Monthly Plan offered by Telus, and who were “consumers” pursuant to the *Consumer Protection Act, 2002*, S.O. 2002, c. 30, Sch. A, excluding any customers who were billed by the second during the entire Class Period.
- c) **“Class Member”** means a member of the Class;
- d) **“Class Period”** means August 18, 2006 to July 1, 2010;
- e) **“Class Proceedings Act”** means the *Class Proceedings Act, 1992*, S.O. 1992, c. 6, as amended;
- f) **“Monthly Plan”** means any post-paid plan offered by Telus for its Services for which it bills its customers monthly;
- g) **“Plan”** means either a Monthly Plan or a Pre-paid Plan which included a fixed number of minutes for a set fee, with additional charges for minutes used in excess of the fixed number;
- h) **“Pre-Paid Plan”** means any pre-paid plan offered by Telus for its Services for which it bills its customers in advance;
- i) **“Rounding-Up Practice”** means Telus’ billing method for certain Plans which involves rounding up calls to the next minute;
- j) **“Services”** means wireless services provided by Telus pursuant to a Plan; and

k) “**Telus**” means, collectively, the Defendants Telus Communications Company, Tele-Mobile Company and Telus Communications Inc.

2. **THIS COURT ORDERS** that this action is certified as a class proceeding pursuant to section 5 of the *Class Proceedings Act* on behalf of the Class;

3. **THIS COURT ORDERS** that any limitation periods applicable to the claims brought on behalf of non-Ontario residents in this action that were suspended pursuant to section 28 of the *Class Proceedings Act* resume running as of the date hereof;

4. **THIS COURT ORDERS** that the claims of persons who are not “consumers” pursuant to the *Consumer Protection Act, 2002*, S.O. 2002, c. 30, Sch. A, are hereby stayed pursuant to the arbitration provisions of the Telus Standard Terms and Conditions and the *Arbitration Act, 1991*, S.O. 1991, Chapter 17;

5. **THIS COURT ORDERS** that Avraham Wellman is appointed as the representative plaintiff for the Class;

6. **THIS COURT DECLARES** that the common issues are as follows:

Breach of Contract

- a) Did the express term of the contract between Telus and Class Members require the Defendants to provide Class Members with a full minute of usage in respect of local, overage, roaming, and/or long distance minutes?
- b) If so, did Telus breach the express term by charging for a full minute of usage when only a partial minute was used?

Consumer Protection Act

- c) Should the notice requirement under section 18(3) of the *Consumer Protection Act, 2002*, S.O. 2002, c. 30, Sch. A (“CPA”) be waived for the members of the Class?

- d) Did Telus' representations through their Plans, which stated that a set number of minutes would be provided, constitute a false, misleading or deceptive representation pursuant to section 14 of the *CPA*?
- e) Are Class Members entitled to recover damages pursuant to section 18(2) of the *CPA*?

Unjust Enrichment

- f) Was Telus unjustly enriched as a result of the Rounding Up Practice, thus requiring restitution to Class Members?

Aggregate Assessment of Damages

- g) Can damages be determined on an aggregate basis in whole or in part, and if so, by which methodology should damages be determined, and in what amount?

Punitive Damages

- h) Are Class Members entitled to an award of punitive damages and if so, in what amount?

Other

- i) Should Telus pay pre-judgment interest to the Class and if so, what annual rate is applicable?
- j) Should Telus pay the costs of administration?

7. **THIS COURT ORDERS** that the timing and manner of notice of certification and opt-out procedures, as well as the litigation plan (the form and content of which will be agreed between the parties), shall be approved by subsequent Order of a Judge of the Superior Court.

8. **THIS COURT ORDERS** that the costs of this motion are payable by the defendants,

forthwith, to the plaintiff in the amount of \$200,000 (two hundred thousand dollars) which amount is inclusive of all disbursements, interest and applicable taxes.

A handwritten signature in blue ink, appearing to read "Morgan J.", is centered on a light blue textured rectangular background.

Morgan J.

Schedule "A"

Court File No.: CV-08-00360838-CP00

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE
MADAM JUSTICE CONWAY

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TUESDAY, THE 25th DAY
OF NOVEMBER, 2014



BETWEEN

AVRAHAM WELLMAN

Plaintiff

- and -

**TELUS COMMUNICATIONS COMPANY, TELE-MOBILE COMPANY and TELUS
COMMUNICATIONS INC.**

Defendants

Proceeding under the *Class Proceeding Act, 1992*

**ORDER
(Certification)**

THIS MOTION made by the Plaintiff for an order certifying this action as a class proceeding was heard on October 27-31, 2014 at Osgoode Hall, 130 Queen Street West, Toronto, Ontario.

ON HEARING the submissions of counsel for the Plaintiff and counsel for the Defendants,

AND ON READING the notice of motion for certification and the evidence filed by the parties, including the following materials:

Plaintiff's Motion Records:

- Certification Record
- Reply Motion Record
- Supplementary Motion Record
- Compendium of the Plaintiffs

Defendants' Motion Records:

- Responding Motion Record re: Certification, Volumes 1 & 2
- Supplementary Responding Motion Record

Transcripts:

- Transcript from the Cross-examination of Bridger Mitchell, held April 7, 2014
- Transcript from the Cross-examination of Johanne Lemay, held April 28, 2014
- Transcript from the Cross-examination of John O'Gorman, held May 8, 2014
- Transcript from the Cross-examination of Avraham Wellman, held July 22, 2014

1. **THIS COURT ORDERS** that, for the purposes of this Order, the following definitions shall apply:

- a) **"Class Counsel"** means Rochon Genova LLP and Eli Karp;
- b) **"Class"** means:

All persons resident in Ontario who, at any time during the Class Period were customers of the Services on either a Pre-Paid Plan or a Monthly Plan offered by TELUS (a "Plan"), excluding any customers who were billed by the second during the entire Class Period.
- c) **"Class Member"** means a member of the Class;
- d) **"Class Period"** means August 18, 2006 to July 1, 2010;
- e) **"Class Proceedings Act"** means the *Class Proceedings Act, 1992*, S.O. 1992, c. 6, as amended;

- f) “**Consumer Sub-Class**” means all Class Members who are “consumers” pursuant to the *Consumer Protection Act*, 2002, S.O. 2002, c. 30, Sch. A;
- g) “**Monthly Plan**” means any post-paid plan offered by TELUS for its Services for which it bills its customers monthly;
- h) “**Plan**” means either a Monthly Plan or a Pre-paid Plan which included a fixed number of minutes for a set fee, with additional charges for minutes used in excess of the fixed number;
- i) “**Pre-Paid Plan**” means any pre-paid plan offered by TELUS for its Services for which it bills its customers in advance;
- j) “**Rounding-Up Practice**” means TELUS’ billing method for certain Plans which involves rounding up calls to the next minute;
- k) “**Services**” means wireless services provided by TELUS pursuant to a Plan; and
- l) “**TELUS**” means, collectively, the Defendants TELUS Communications Company, Tele-Mobile Company and TELUS Communications Inc.

2. **THIS COURT ORDERS** that this action is certified as a class proceeding pursuant to section 5 of the *Class Proceedings Act* on behalf of the Class and the Consumer Sub-Class;

3. **THIS COURT ORDERS** that any limitation periods applicable to the claims brought on behalf of non-Ontario residents in this action that were suspended pursuant to section 28 of the *Class Proceedings Act* resume running as of the date hereof;

4. **THIS COURT ORDERS** that a stay of the claims of the non-consumer Class Members pursuant to the arbitration provisions of the TELUS Standard Terms and Conditions and the *Arbitration Act, 1991*, S.O. 1991, Chapter 17 is denied;

5. **THIS COURT ORDERS** that Avraham Wellman is appointed as the representative plaintiff for the Class and the Consumer Sub-Class;

6. **THIS COURT DECLARES** that the common issues are as follows:

Breach of Contract

- a) Did the express term of the contract between TELUS and Class Members require the Defendants to provide Class Members with a full minute of usage in respect of local, overage, roaming, and/or long distance minutes?
- b) If so, did TELUS breach the express term by charging for a full minute of usage when only a partial minute was used?

Consumer Protection Act

- c) Should the notice requirement under section 18(3) of the *Consumer Protection Act, 2002*, S.O. 2002, c. 30, Sch. A ("CPA") be waived for the members of the consumer sub-class?
- d) Did TELUS' representations through their Plans, which stated that a set number of minutes would be provided, constitute a false, misleading or deceptive representation pursuant to section 14 of the CPA?
- e) Are Consumer Sub-Class Members entitled to recover damages pursuant to section 18(2) of the CPA?

Unjust Enrichment

- f) Was TELUS unjustly enriched as a result of the Rounding Up Practice, thus requiring restitution to Class Members?

Aggregate Assessment of Damages

- g) Can damages be determined on an aggregate basis in whole or in part, and if so, by which methodology should damages be determined, and in what amount?

Punitive Damages

- h) Are Class Members entitled to an award of punitive damages and if so, in what amount?

Other

- i) Should TELUS pay pre-judgment interest to the Class and if so, what annual rate is applicable?
- j) Should TELUS pay the costs of administration?

7. **THIS COURT ORDERS** that the timing and manner of notice of certification and opt-out procedures, as well as the litigation plan (the form and content of which will be agreed between the parties), shall be approved by subsequent Order of a Judge of the Superior Court.

8. **THIS COURT ORDERS** that the costs of this motion are payable by the defendants forthwith to the plaintiff in the amount of \$200,000 (two hundred thousand dollars), which amount is inclusive of all disbursements, interest and applicable taxes.



ENTERED AT / INSCRIT A TORONTO
ON / BOOK NO.:
LE / DANS LE REGISTRE NO.:

JUN - 4 2015

AS DOCUMENT NO.:
A TITRE DE DOCUMENT NO.:
PER / PAR:



AVRAHAM WELLMAN
Plaintiff

-and-

TELUS COMMUNICATIONS COMPANY, et al.
Defendants

Court File No.: CV-08-00360838-CP00

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED IN
TORONTO

ORDER

(Varying Certification Order Dated November 25, 2014)

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