

**ORANGE COUNTY SUPERIOR COURT, CENTRAL JUSTICE CENTER  
STATE OF CALIFORNIA (Unlimited Civil)**

**700 Civic Center Drive West, Santa Ana, CA 92701**

SCOTT FREEMAN, on behalf of himself,  
the general public as private attorney  
general, and all persons similarly situated,

Plaintiff,

v.

RICOCHET NETWORKS, INC., et. al.,

Defendants.

Case No. 03CC00525  
Assigned for All Purposes to:  
Honorable Stephen J. Sundvold  
Dept. CX101

**NOTICE OF PENDING CLASS ACTION  
SETTLEMENT**

**TO ALL PERSONS WHO SUBSCRIBED TO THE RICOCHET NETWORKS "COMPLETE" WIRELESS SERVICE IN  
THE SAN DIEGO AREA BETWEEN JULY 15, 2003 AND DECEMBER 19, 2003:**

**Please read this Notice carefully as it relates to a proposed Class Action Settlement that affects your rights. This is not a solicitation and you are not being sued.**

YOU ARE HEREBY NOTIFIED pursuant to California Civil Code section 382 and the Order of the Orange County Superior Court of the State of California, a proposed settlement (the "Class Action Settlement") has been reached in the above-captioned litigation between Scott Freeman, individually ("Plaintiff") and on behalf of all similarly situated persons (collectively with Plaintiff the "Settlement Class"), and Defendant Ricochet Networks, Inc. ("RNI" or "Defendant"). A Settlement Class has been conditionally certified by the Court for purposes of this proposed Class Action Settlement only. This Class Action Settlement and certification of the Settlement Class is subject to, among other things, final nonappealable approval of the Superior Court.

Please read this entire document carefully to make sure you understand your rights and obligations. You have the right to consult your own attorney at your expense but you are not required to do so. If you have specific questions, you may contact Plaintiff's counsel (also referred to herein as "Class Counsel") Jeffrey Wilens, Esq. at [jeff@lakeshorelaw.org](mailto:jeff@lakeshorelaw.org).

**DESCRIPTION OF THE ACTION**

Plaintiff Freeman filed the Action on November 10, 2003 against Defendant, alleging a violation of the Unfair Competition Law and Consumer Legal Remedies Act.

In the Action, Freeman alleged that he subscribed to RNI's "Ricochet Complete" wireless Internet service plan for \$44.95 per month. Freeman alleges that RNI advertised that subscribers to this plan would receive download speeds of 4-6 times "dial-up." By contrast, RNI offered another plan—Ricochet Limited—that promised lower speeds but was cheaper at \$29.95 per month. Freeman contends that between July 2003 and December 2003, RNI "throttled back" the download speed for Ricochet Complete subscribers so that it was comparable to the speed enjoyed by Limited subscribers. In essence, Plaintiff contends, the Complete subscribers were paying \$44.95 for essentially the same level of service received for \$29.95. Thus, Plaintiff contends the class members were damaged in the amount of roughly \$15 per month or up to \$90 total.

RNI answered the Complaint and has vigorously denied and continues to deny each and every one of the allegations asserted in the Complaint and has asserted several affirmative defenses, including, without limitation, that the Subscriber Agreement authorized RNI to manage the bandwidth used by all subscribers so as to ensure all subscribers have adequate bandwidth to use the services and that this fact was adequately disclosed in the Agreement. Defendant further believes that other than for purposes of settlement, the Action would not be appropriate for class action certification and any request for certification, other than for purposes of settlement, would be vigorously contested.

Counsel for the Plaintiff has sought and obtained extensive information regarding Defendant and its services, through formal and informal discovery. During the course of discovery, it has been established that bandwidth reduction occurred between July 2003 and December 2003; that somewhere between 2,000 and 3,000 persons were subscribers to Ricochet Complete plan for at least some time during that period; and that each of those subscribers would have paid a monthly fee \$15 more than required for the Limited Plan.

### **DEFINITION OF THE SETTLEMENT CLASS**

By Order dated March 2, 2005, the Superior Court has conditionally certified a Settlement Class defined as follows:

**All Persons who for any period of time between July 15, 2003 and December 19, 2003 subscribed to the San Diego Ricochet Complete plan.**

If you are receiving this Notice, it has been determined that you qualify to be a Settlement Class member.

The Superior Court has also conditionally approved and appointed Jeffrey Wilens, Esq., as Class Counsel for the Settlement Class.

If you fit within the definition of the Settlement Class, or are the trustee, legal representative, successor, heir, executor, administrator or assign of any such person, you are a Settlement Class member unless you exclude yourself from the Settlement Class as set forth below. If you are a Settlement Class member, the Class Action Settlement may affect your rights to later pursue claims against the Defendants, as is more fully set forth below under the heading "Release of Claims."

### **TERMS OF THE SETTLEMENT**

1. Defendant shall provide compensation to Settlement Class members, who do not Opt-Out, as follows:
  - a) **Free month's service to current customers.** RNI will provide one free month of service to all class members who are still subscribers to any of RNI's service plans at the Effective Date of this Stipulation. The one free month will be at a level of service comparable to the speed and benefits provided under the old Ricochet Complete Plan (specifically, without a fixed maximum bandwidth like the fixed maximum that used to apply to Ricochet Limited customers). It will be provided the second complete month following the Effective Date.
  - b) **Free month's service to former customers.** RNI will provide one free month of service to all class members who are not subscribers to any of RNI's service plans at the Effective Date. Within 45 days of the Effective Date, RNI will mail a certificate to the class members who qualify for relief under this subdivision that may be used to sign up for the free service. To qualify to receive the one free month of service, the class member must contact RNI at the number listed on the certificate and request the free month of service. The request must be made within one year of the Effective Date. The former customers who still are in possession of their modems, can simply have RNI re-activate their service for one month. It is anticipated that many former customers will still have their modems as they were required to purchase them. The former customers who do not have possession of their modem, will be required to pay the actual shipping cost (not to exceed \$10) for a loaner modem and will be required to give a credit card deposit of \$50 to secure their return of the modem at the end of their free month. Customers will be required to pay the return shipping costs. As an incentive, RNI will refund the shipping costs if the customer signs up for a full year of service after the 30 day trial.
2. In addition, Defendant will pay all costs associated with the provision of Notice as required by the Court and administration of this Settlement.
3. For his efforts on behalf of the Settlement Class in bringing this lawsuit, and subject to the Court's approval, Defendant has agreed to pay a service fee of \$1,000 to Freeman. This payment is in addition to any other payment Freeman receives as a Settlement Class member.
4. For his efforts on behalf of the Settlement Class and subject to the Court's approval, Defendant has agreed not to oppose and will pay Class Counsel an award of attorney's fees and reimbursement of court costs and expenses not to exceed \$78,000.

## GENERAL RELEASE OF CLAIMS

As a term of the Class Action Settlement, all persons falling within the definition of the Settlement Class who do not validly and timely “opt-out” of or exclude themselves from the Class Action Settlement shall be deemed to have, fully, finally and forever released, settled and discharged RNI, its stockholders, subsidiaries, affiliates, predecessors, and successors and their officers, directors, insurers, employees, agents, and attorneys (collectively, the “Released Persons”), from all Settled Claims.

For purposes of the preceding paragraph, “Settled Claims” means and includes any and all claims, actions, causes of action, offsets or liabilities, whether known or unknown, suspected or unsuspected, contingent or matured, which Freeman or any member of the Settlement Class has had, now has, or may in the future have, arising from or relating to the RNI Ricochet Complete service (or any other service offered by RNI) through the Effective Date, based upon or arising from data transfer or connection speeds, any form of bandwidth reduction, or speed of performance, or any written or oral advertisements or other statements relating thereto, except for claims for bodily injury or property damage.

As of the Effective Date of this Stipulation, Freeman and each member of the Settlement Class who has not opted out in accordance with the procedures set forth below, waives and relinquishes, to the fullest extent permitted by law, the benefits of California Civil Code section 1542 and all similar state or federal statutes or rules of law. California Civil Code section 1542 provides: “**A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.**”

## NOTICE OF FINAL APPROVAL HEARING AND ATTORNEY’S FEE HEARING

The Court has ordered that a hearing (“Fairness” or “Final Approval Hearing”) will be held before the Honorable Stephen J. Sundvold of the Superior Court in Department CX105 at the Orange County Courthouse, 751 West Santa Ana Blvd., Santa Ana, California, 92701 on **May 20, 2005 at 9:00 a.m.** to consider whether the Class Action Settlement described above is fair, reasonable and adequate to the Settlement Class and whether the requested amount for fees, costs and expenses should be awarded.

If you are a Settlement Class member, you may, but are not required to, appear personally or through counsel, and be heard at the hearing and may object to or express your views regarding the settlement or award of attorney’s fees pursuant to the procedure set forth below.

## YOUR OPTIONS

1. You may elect to remain a member of the Settlement Class and receive the free month of service to current or former customers. If you take no action at all, this will happen automatically. You will be bound by any judgment entered in this Action including the releases described above.
2. You may opt-out (exclude) yourself from the Class Action Settlement. If you exclude yourself from the Class Action Settlement, you will not receive any benefits of the Settlement including the free month of service or bonus month. However, you will not be bound by any judgment entered in this Action including the releases described above. To exclude yourself from the Class Action Settlement:
  - a) You must deposit either in the U.S. mail for first-class delivery or with an overnight mail service an opt-out notice that includes your name and address, the name of this Action, a statement that you wish to be excluded from this Settlement, and your signature.
  - b) The opt-out notices must be addressed to Class Counsel at the Lakeshore Law Center, Jeffrey Wilens, Esq., 17476 Yorba Linda Blvd., Suite 221, Yorba Linda, CA 92886. Class Counsel shall provide Defendant’s Counsel with copies of all opt-out notices received by him within five days of the expiration of the deadline to opt-out.
  - c) The opt-out notice must be postmarked by **May 2, 2005**.

3. You may remain a member of the Settlement Class (and still receive the benefits and compensation described above including the free or bonus month) and object to the proposed settlement or the request for request for attorney's fees, costs and expenses. To make an objection you must:
- a) File with the Court a written statement of your objection(s) and any supporting papers on or before **May 2, 2005**. If you intend to appear personally or through counsel at the Final Approval Hearing, you must specify this in your written statement.
  - b) By the same deadline, you must serve the written statement of your objection(s) and any supporting papers on counsel for the parties at the following addresses:

**Counsel for Plaintiff**  
**Lakeshore Law Center**  
**Jeffrey Wilens, Esq.**  
**17476 Yorba Linda Blvd.**  
**Suite 221**  
**Yorba Linda, CA 92886**

**Counsel for Ricochet Networks**  
**Grant, Genovese & Baratta, LLP**  
**David C. Grant, Esq.**  
**2030 Main Street**  
**Suite 1600**  
**Irvine, CA 92614**

#### **EXAMINATION OF PAPERS**

This Notice does not fully describe the Action or the Class Action Settlement. You may inspect the Court files regarding the Action, including the full Stipulation of Settlement, at the Office of the Clerk of the Court, Orange County Superior Court, Civil Complex Center, 751 West Santa Ana Blvd, Santa Ana, California during the hours of 9:00 a.m. to 4:00 p.m., Monday through Friday.

Dated: March 2, 2005

By /s/ STEPHEN J. SUNDVOLD  
Honorable Stephen J. Sundvold  
Judge of the Superior Court