

CONFIRMED COPY

1 RICHARD E. DROOYAN (State Bar No. 065672)
2 MUNGER, TOLLES & OLSON LLP
3 355 South Grand Avenue, 35th Floor
4 Los Angeles, CA 90071-1560
5 Telephone: (213) 683-9100
6 Facsimile: (213) 687-3702

7
8 Attorneys for Defendants Cellco Partnership doing
9 business as Verizon Wireless and Verizon Wireless
10 Messaging Services

ORIGINAL FILED
MAR 21 7 02 E
LOS ANGELES
SUPERIOR COURT

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

11 GRANT R. OPPERMAN, et al., as
12 individuals, and on behalf of all others
13 similarly situated and the general public,

14 Plaintiffs,

15 vs.

16 CELLCO PARTNERSHIP d/b/a
17 VERIZON WIRELESS, a Delaware
18 Partnership, VERIZON WIRELESS
19 MESSAGING SERVICES, a Delaware
20 Corporation, and DOES 1 through 20,
21 inclusive,

22 Defendants.

CASE NO. BC 326764

CLASS ACTION – Assigned to Honorable
Robert Hess, Dept. 24 for All Proceedings

[PROPOSED] ORDER AND JUDGMENT

1 WHEREAS, on September 2, 2005, an Order Re: Preliminary Approval of
2 Proposed Settlement (“Preliminary Approval Order”) was entered by this Court, preliminarily
3 approving the proposed settlement of the Action pursuant to the terms of the Settlement
4 Agreement, directing that notice be given to the members of the Settlement Class, and setting
5 January 17, 2006 as the date for the Final Approval Hearing.

6 WHEREAS, pursuant to the Parties’ plan for providing notice to the Settlement
7 Class Members, Settlement Class Members were to be sent notice by first class mail of the
8 proposed Settlement and the Final Approval Hearing to be held by the Court on January 17, 2006
9 to determine, *inter alia*: (1) whether the terms and conditions of the Settlement Agreement are
10 fair, reasonable and adequate for the release of the Released Claims against the Released Parties;
11 (2) whether judgment should be entered dismissing the Second Amended Complaint with
12 prejudice; (3) whether Class Counsel’s application for attorneys’ fees and expenses should be
13 approved; and (4) whether the payment of incentive awards should be approved (“Notice”).

14 WHEREAS, on October 7, 2005, the Settlement Administrator sent the Notice and
15 Claim Form packets to 241,088 Verizon Wireless customers identified by Verizon Wireless as
16 having activated Verizon Wireless cellular service for a Motorola V710 telephone on or before
17 January 31, 2005.

18 WHEREAS, Settlement Class Members who were sent this Notice and Claim
19 Form packets and/or who submitted claims on or before December 9, 2005 (the “Initial
20 Settlement Class Members”), were therefore notified of their right to appear at the Final Approval
21 Hearing on January 17, 2006, in support of or in opposition to the proposed Settlement.

22 WHEREAS, a Final Approval Hearing was held on January 17, 2006, at which no
23 objectors appeared and the Court considered all properly filed written objections and heard
24 argument from the parties’ counsel.

25 WHEREAS, on January 18, 2006, the Court entered an Order and Judgment
26 approving the settlement for the Initial Settlement Class Members who did not request exclusion
27 from the class on or before December 9, 2005.

28 WHEREAS, in late December, 2005 Verizon Wireless advised the Court and

1 counsel for plaintiffs that as a result of an inadvertent error, not all of the Settlement Class
2 Members had been sent the required Notice and Claim Form packet as part of the initial mailing
3 on October 7, 2005.

4 WHEREAS, being so advised, the Court ordered that Verizon Wireless cause the
5 required Notice and Claim Form packet to be sent to all Settlement Class Members not included
6 in the initial mailing on October 7, 2005, and that Plaintiff's Motion for Attorneys' Fees and
7 Expenses be continued.

8 WHEREAS, the Court set March 16, 2006, for a second Final Approval Hearing to
9 hear any objections to the Settlement from the additional Settlement Class Members to whom the
10 Notice and Claim Form packets had not been sent in the initial mailing on October 7, 2005, and
11 who did not request exclusion from the Class on or before March 3, 2006, and to consider
12 whether to approve the Settlement for these additional Settlement Class Members, and also
13 continued Plaintiffs' Motion for Attorneys' Fees and Expenses to March 16, 2006.

14 WHEREAS, the Court also ordered Plaintiffs to send written notice to each Initial
15 Settlement Class Member who objected to the settlement that the hearing on Plaintiffs' Motion
16 for Attorneys' Fees and Expenses had been continued to March 16, 2006.

17 WHEREAS, on January 6, 2006, the Settlement Administrator sent the Notices
18 and Claim Form packets to an additional 106,151 Verizon Wireless customers who activated
19 Verizon Wireless cellular service for a Motorola V710 telephone on or before January 31, 2005,
20 and who had not been sent the Notice and Claim Form packets as part of the initial mailing on
21 October 7, 2005.

22 WHEREAS, Plaintiffs sent written notice to each Initial Settlement Class Member
23 who objected to the settlement that the hearing on Plaintiffs' Motion for Attorneys' Fees and
24 Expenses had been continued to March 16, 2006.

25 WHEREAS, Settlement Class Members who were mailed the Notice and Claim
26 Form packets on January 6, 2006, and Initial Settlement Class Members who had objected, were
27 therefore notified of their right to appear at the March 16, 2006, Final Approval Hearing in
28 support of or in opposition to the proposed Settlement and/or to Plaintiffs' request for attorneys'

1 fees.

2 WHEREAS, a Final Approval Hearing was held on March 16, 2006, at which no
3 objectors appeared and the Court considered all properly filed written objections and heard
4 argument from the parties' counsel.

5 NOW, THEREFORE, the Court, having heard the presentations of Class Counsel
6 and Defendants' Counsel, having reviewed all of the submissions presented with respect to the
7 proposed Settlement, and having reviewed the materials in support thereof,

8 IT IS HEREBY ORDERED, ADJUDGED and DECREED THAT:

9 1. The capitalized terms used in this Order and Judgment shall have the same
10 meaning as defined in the Settlement Agreement except as may otherwise be ordered.

11 2. The Court has jurisdiction over the subject matter of this Action and over all
12 claims raised therein and all Parties thereto, including the Settlement Class.

13 3. For purposes of this Order and Judgment, the Settlement Class Members
14 bound by this Order and Judgment shall consist of any present and/or former customer of Verizon
15 Wireless who activated Verizon Wireless Cellular Service for a Motorola V710 cellular telephone
16 on or before January 31, 2005, excluding Defendants and entities in which Defendants have a
17 controlling interest; any employees, officers, directors of Defendants and any legal
18 representatives, assigns, successors of Defendants; any Judge assigned to hear this case; and all
19 Initial Settlement Class Members, and to whom the Notice and Claim Form packets were mailed
20 by the Settlement Administrator on January 6, 2006, and who did not submit a timely and valid
21 Request for Exclusion, on or before March 3, 2005 (the "Additional Settlement Class Members").
22 A list of all Additional Settlement Class Members who submitted timely and valid Requests for
23 Exclusion shall be filed by the Settlement Administrator under seal.

24 4. The Court finds that the Notice Plan set forth in Article IV of the Settlement
25 Agreement and effectuated pursuant to the Preliminary Approval Order and subsequent Order
26 described *supra* constitutes the best notice practicable under the circumstances and constitutes
27 due and sufficient notice to the Additional Settlement Class Members of the pendency of the
28 Action, the certification of the Class for settlement purposes only, the terms of the Settlement

1 Agreement, and the March 16, 2006 Final Approval Hearing, and satisfies the requirements of
2 California law and federal due process of law.

3 5. The Settlement, as set forth in the Settlement Agreement, is in all respects
4 fair, reasonable, adequate and in the best interests of the Additional Settlement Class Members,
5 and is hereby approved. The Parties to the Settlement Agreement shall effectuate the Settlement
6 Agreement according to its terms. The Settlement Agreement and every term and provision
7 thereof shall be deemed incorporated herein as if explicitly set forth and shall have the full force
8 of an Order of this Court.

9 6. Any Additional Settlement Class Member who is eligible to receive a refund
10 or credit as described in the Settlement Agreement, but did not timely return a valid Claim Form
11 in accordance with the instructions contained therein, shall not be entitled to any refunds or
12 credits under the Settlement.

13 7. Upon the Effective Date of this Order and Judgment, all Additional
14 Settlement Class Members shall have, by operation of this Order and Judgment, fully, finally and
15 forever released, relinquished, and discharged all Released Parties from all Released Claims,
16 whether or not such Additional Settlement Class Members execute and deliver a Claim Form.

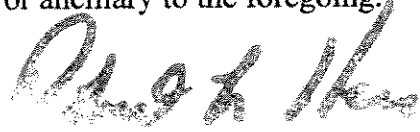
17 8. Additional Settlement Class Members, and their successors, assigns, parents,
18 subsidiaries, affiliates or agents of any of them, are hereby permanently barred and enjoined from
19 instituting, commencing or prosecuting, either directly or in any other capacity, any Released
20 Claim against any of the Released Parties.

21 9. This Order and Judgment, the Settlement Agreement, the Settlement which it
22 reflects, and any and all acts, statements, documents or proceedings relating to the Settlement are
23 not, and shall not be construed as, or used as an admission by or against Defendants or any other
24 Released Party of any fault, wrongdoing, or liability on their part, or of the validity of any
25 Released Claim, or of the existence or amount of damages.

26 10. The Court shall enter a separate Order awarding reasonable attorneys' fees
27 and expenses, in an amount to be set forth in that separate order.

1 11. The above-captioned Action is hereby dismissed in its entirety with
2 prejudice with respect to the Additional Settlement Class Members. Except as otherwise
3 provided in the Settlement Agreement, this Order and/or the order addressing the Motion For An
4 Award Of Fees And Expenses, the Parties shall bear their own costs and attorneys' fees. Without
5 affecting the finality of the Judgment hereby entered, the Court reserves jurisdiction over the
6 implementation and interpretation of the Settlement, including distribution of the settlement
7 benefits, enforcement and administration of the Settlement Agreement, including any releases in
8 connection therewith, and any other matters related or ancillary to the foregoing.

9 Dated: March 21, 2006



Honorable Robert L. Hess
Judge of the Los Angeles County Superior Court

12 **APPROVED AS TO FORM**


13 Kirtland & Packard LLP

14 BY 
15

16 Michael L. Kelly
Attorney for Plaintiffs

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Munger, Tolles & Olson LLP

By 
Richard E. Drooyan

Attorneys for Defendants

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is Munger, Tolles & Olson LLP, 355 South Grand Avenue, Los Angeles, California 90071.

On **March 21, 2006**, I served the documents described as:

[PROPOSED] ORDER AND JUDGMENT

(BY MAIL) By placing true copies thereof enclosed in sealed envelopes addressed as stated on the attached service list. Such envelope was deposited with postage thereon prepaid in the United States mail. I am familiar with Munger, Tolles & Olson LLP's practice for collection and processing of correspondence for mailing with the United States Postal Service; in the ordinary course of business, correspondence placed in interoffice mail is deposited with the United States Postal Service with first class postage thereon fully prepaid on the same day it is placed for collection and mailing.

See Attached Service List

(BY ELECTRONIC MAIL) The above-referenced documents were transmitted electronically by attaching a true copy thereof to an electronic mail message and sending it to the electronic mail addresses on the attached service list.

See Attached Service List

I declare under penalty of perjury that the foregoing is true and correct.

Executed on **March 21, 2006**, at Los Angeles, California.

Sharon Nial

SERVICE LIST

Opperman, et al. v. Cellco Partnership d/b/a Verizon Wireless
Case No. BC 326764

<p>Michael L. Kelly, Esq. Robert M. Churella, Esq. Kirtland & Packard LLP 2361 Rosecrans Avenue, 4th Fl. El Segundo, CA 90245 mlk@kirtlandpackard.com</p>	<p>Kevin Yourman, Esq. Behram V. Parekh, Esq. Yourman Alexander & Parekh LLP 3601 Aviation Boulevard, Suite 3000 Manhattan Beach, CA 90266 kyourman@yaplaw.com</p>
<p>John R. Climaco, Esq. Climaco Lefkowitz Peca Wilcox & Garofoli Co., LPA 1228 Euclid Avenue, Suite 900 Cleveland, OH 44115 jrclim@climacolaw.com</p>	<p>David P. Meyer, Esq. David P. Meyer & Associates Co., LPA 401 North Front Street, Suite 350 Columbus, OH 43215 dmeyer@dmlaws.com</p>
<p>William R. Weinstein, Esq. Robert I. Harwood, Esq. Wechsler Harwood LLP 488 Madison Avenue, 8th Fl. New York, NY 10022 wweinstein@whesq.com</p>	