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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MICHELLE SIMS, individually and on behalf
of a class of similarly-situated individuals,

Plaintiff,

vs.

CELLCO PARTNERSHIP d/b/a VERIZON
WIRELESS, a Delaware general partnership,

Defendant.

Case No. 07-1510 MC

CLASS ACTION

STIPULATION OF SETTLEMENT

1 **STIPULATION OF SETTLEMENT**

2 This AGREEMENT is entered into by and among (i) Michelle Sims ("Sims" or
3 "Plaintiff"), (ii) the Settlement Class (as defined herein) (the Settlement Class and Sims are
4 collectively herein referred to as the "Plaintiffs" unless otherwise noted), and (iii) Defendant
5 Cellco Partnership d/b/a Verizon Wireless ("Verizon Wireless"), by and through their respective
6 counsel of record in this Action. All the parties to this Stipulation of Settlement ("Stipulation")
7 shall collectively be referred to as the "Parties" or the "Settling Parties." This Stipulation is
8 intended by the Parties to fully, finally, and forever resolve, discharge, and settle the Released
9 Claims (as the term is defined below), upon and subject to the terms and conditions hereof, and
10 subject to the approval of the Court.

11 **RECITALS**

12 A. On March 15, 2007, Sims brought a putative class action against Verizon Wireless
13 in the United States District Court for the Northern District of California, which was assigned
14 Case No. 3:07-cv-1510-MC (the "Action"). In the Action, Sims alleged that she had been
15 assigned a "recycled" mobile telephone number and that her mobile phone account with Verizon
16 Wireless was charged for third-party mobile content that she had not authorized, but rather that
17 purportedly had been authorized by the previous owner and/or users of that mobile telephone
18 number. Sims asserted claims on behalf of a putative nationwide class of similarly situated
19 Verizon Wireless Subscribers. Sims alleged causes of action for violation of 47 U.S.C. § 201;
20 unauthorized telephone charges in violation of California Public Utilities Code § 2890; violation
21 of California's Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.*; violation of
22 California's False Advertising Law, Cal. Bus. & Prof. Code §§ 17500, *et seq.*; and for breach of
23 contract.

24 B. On February 25, 2008, counsel for the parties met in person in the offices of JAMS
25 in San Francisco, California, with the Honorable Edward A. Infante (ret.) acting as mediator, and
26 agreed to settle all claims in the Action.

27 C. At all times, Verizon Wireless has denied and continues to deny any wrongdoing
28 whatsoever, and has denied and continues to deny that it committed or has threatened or

1 attempted to commit, any of the wrongful acts or violations of law or duty that are alleged in the
2 Action, and contends that it has acted properly. Verizon Wireless also denies: (1) each and all of
3 the claims and contentions alleged by Sims and the Settlement Class in the Action; (2) all charges
4 of wrongdoing or liability against it arising out of any conduct, statements, acts, or omissions
5 alleged in the Action; and (3) that Sims or the Settlement Class is entitled to any form of damages
6 based on the conduct alleged in the Action. In addition, Verizon Wireless maintains that it has
7 meritorious defenses to all claims alleged in the Action. Nonetheless, taking into account the
8 uncertainty and risks inherent in any litigation, especially in complex cases, Verizon Wireless has
9 concluded that further defense of the Action would be protracted, burdensome, and expensive,
10 and that it is desirable and beneficial to it that the Action be fully and finally settled and
11 terminated in the manner and upon the terms and conditions set forth in this Stipulation. This
12 Stipulation, and all related documents, shall not be construed as or deemed to be evidence of or an
13 admission or concession on the part of Verizon Wireless, or any of the Released Parties (defined
14 below), with respect to any claim of any fault or liability or wrongdoing or damage whatsoever.

15 D. Plaintiff believes that the claims asserted in the Action have merit. Nonetheless,
16 Plaintiff and her counsel recognize and acknowledge the expense and length of continued
17 prosecution of the Action against Verizon Wireless through trial and any subsequent appeals.
18 Plaintiff and her counsel also have taken into account the uncertain outcome and risks of any
19 litigation, especially in complex actions, as well as the difficulties and delays inherent in such
20 litigation. Therefore, Plaintiff believes that it is desirable that the Released Claims be fully and
21 finally compromised, settled and resolved with prejudice, and barred pursuant to the terms set
22 forth herein. Based on their evaluation, Class Counsel have concluded that the terms and
23 conditions of this Stipulation are fair, reasonable, and adequate to the Settlement Class, and that it
24 is in the best interests of the Settlement Class to settle the claims raised in the Action pursuant to
25 the terms and provisions of this Stipulation. This Stipulation, and all related documents, shall not
26 be construed as or deemed to be evidence of or an admission or concession on the part of Plaintiff
27 as to the strength of any defense or argument by Verizon Wireless or any infirmity in any claim
28 by Plaintiff.

1 E. The Settling Parties agree that the Action was resolved in good faith, following
2 arms' length bargaining, that the settlement reflected herein confers substantial benefits upon the
3 Settling Parties, and each of them, and, based upon their evaluation, achieves a result that is fair,
4 reasonable and adequate.

5 NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among
6 Michelle Sims, the Settlement Class, and each of them, and Verizon Wireless, by and through
7 their respective undersigned counsel that, subject to approval of the Court pursuant to the Federal
8 Rules of Civil Procedure, Rule 23(e), in consideration of the benefits flowing to the Settling
9 Parties from the Settlement set forth herein, that the Action and the Released Claims shall be
10 finally and fully compromised, settled and released, and the Action shall be dismissed with
11 prejudice, upon and subject to the terms and conditions of this Stipulation.

12 **AGREEMENT**

13 1. Definitions

14 As used in this Stipulation, the following terms have the meanings specified below:

15 1.1 "Lead Class Counsel" means Jay Edelson of KamberEdelson, LLC, and John G.
16 Jacobs of The Jacobs Law Firm, Chtd.

17 1.2 "Class Counsel" means Lead Class Counsel and Terry M. Gordon of Law Offices
18 of Terry M. Gordon, Myles McGuire of KamberEdelson, LLC, and Bryan G. Kolton of The
19 Jacobs Law Firm, Chtd.

20 1.3 "Court" means the United States District Court for the Northern District of
21 California.

22 1.4 "Disputed Charges" means charges to a Settlement Class Member who was
23 assigned a mobile telephone number previously assigned to another owner and/or user, and who
24 paid charges for third party mobile content that purportedly were authorized by the prior owner
25 and/or users of that mobile telephone number and not authorized by the Settlement Class
26 Member, and for which the Settlement Class Member has not previously received a full credit or
27 refund.

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1 1.5 “Effective Date of Settlement” or “Effective Date” means the first date by which
2 all of the events and conditions specified in Section 10.1 have been met and have occurred.

3 1.6 “Final” means one business day following the later of the following events: (i) the
4 date upon which the time expires for filing or noticing any appeal of the Court’s Final Judgment
5 and Order of Dismissal With Prejudice, approving the Settlement substantially in the form of
6 Exhibit C hereto; (ii) if there is an appeal or appeals, other than an appeal or appeals solely with
7 respect to attorneys’ fees and reimbursement of expenses, the date of completion, in a manner that
8 finally affirms and leaves in place the Final Judgment and Order of Dismissal With Prejudice
9 without any material modification, of all proceedings arising out of the appeal or appeals
10 (including, but not limited to, the expiration of all deadlines for motions for reconsideration or
11 petitions for review and/or certiorari, all proceedings ordered on remand, and all proceedings
12 arising out of any subsequent appeal or appeals following decisions on remand); or (iii) the date
13 of final dismissal of any appeal or the final dismissal of any proceeding on certiorari.

14 1.7 “Final Judgment and Order of Dismissal With Prejudice” means the proposed final
15 judgment and order to be entered by the Court approving the Settlement, substantially in the form
16 of Exhibit C hereto.

17 1.8 “Notice” means the Notice of Pendency and Proposed Settlement of Class Action
18 and Settlement Hearing Thereon, which is to be sent to Settlement Class Members substantially in
19 the form attached hereto as Exhibit A-1.

20 1.9 “Parties” or “Settling Parties” means Michelle Sims, the Settlement Class and
21 Verizon Wireless.

22 1.10 “Person” means an individual, corporation, partnership, limited partnership,
23 association, joint stock company, estate, legal representative, trust, unincorporated association,
24 government or any political subdivision or agency thereof, and any business or legal entity and
25 their spouses, heirs, predecessors, successors, representatives, or assigns.

26 1.11 “Plaintiffs” or “Class Action Plaintiffs” means Michelle Sims and the Settlement
27 Class Members.

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1 1.12 "Preliminary Approval Order" means the proposed order preliminarily approving
2 the Settlement, certifying the Settlement Class solely for purposes of settlement, and directing
3 notice of the Settlement to the Settlement Class substantially in the form attached hereto as
4 Exhibit B.

5 1.13 "Released Claims" means all claims (including "Unknown Claims" as defined
6 below), demands, rights, liabilities or causes of action, in law or in equity, accrued or unaccrued,
7 fixed or contingent, direct, individual or representative, of every nature and description
8 whatsoever, whether based on federal, state, local, statutory or common law or any other law, rule
9 or regulation, including the law of any jurisdiction outside the United States, belonging to
10 Plaintiffs and their present or past heirs, executors, estates, administrators, predecessors,
11 successors, assigns, parents, subsidiaries, associates, affiliates, employers, employees, agents,
12 consultants, insurers, directors, managing directors, officers, partners, principals, members,
13 attorneys, accountants, financial and other advisors, investment bankers, underwriters, lenders,
14 and any other representatives of any of these Persons and entities (including, without limitation,
15 any claims, whether direct, derivative, representative or in any other capacity, arising under
16 federal, state, local, statutory or common law or any other law, rule or regulation, including the
17 law of any jurisdiction outside of the United States), against the Released Parties, or any of them,
18 arising out of the facts, transactions, events, matters, occurrences, acts, disclosures, statements,
19 misrepresentations, omissions or failures to act that were or could have been alleged or asserted in
20 the Action, or that relate in any way to any violation of law, any misstatement or omission, any
21 breach of duty, any negligence or fraud or any other alleged wrongdoing or misconduct relating
22 to Disputed Charges.

23 1.14 "Released Parties" means Verizon Wireless and any and all of its present or past
24 heirs, executors, estates, administrators, predecessors, successors, assigns, parents, subsidiaries,
25 associates, affiliates, employers, employees, agents, consultants, insurers, directors, managing
26 directors, officers, partners, principals, members, attorneys, accountants, financial and other
27 advisors, investment bankers, underwriters, shareholders, lenders, auditors, investment advisors,
28 legal representatives, successors in interest, assigns and Persons, firms, trusts, corporations,

1 officers, directors, other individuals or entities in which Verizon Wireless has a controlling
2 interest or which is related to or affiliated with it, or any other representatives of any of these
3 Persons and entities. This definition is not intended to include any billing intermediary (also
4 known as "aggregators"), such as Verisign, Inc., m-Qube, Inc., m-Blox, Inc., or third-party
5 mobile content providers.

6 1.15 "Settlement" or "Settlement Agreement" means the settlement contemplated by
7 this Stipulation.

8 1.16 "Settlement Administrator" means an entity to be selected by Verizon Wireless,
9 with input from Class Counsel, to perform the tasks set forth in Section 5, below.

10 1.17 "Settlement Class" means those past and present Verizon Wireless Subscribers
11 who, as reflected in Verizon Wireless' records, were assigned a mobile telephone number
12 previously assigned to another owner and/or user, and who paid Disputed Charges.

13 1.18 "Settlement Class Member" means a Person who falls within the definition of the
14 Settlement Class as set forth above and who has not submitted a valid request for exclusion.

15 1.19 "Subscriber" means each current or former Verizon Wireless customer for whom a
16 distinct mobile telephone number was or is currently assigned.

17 1.20 "Unknown Claims" means claims that could have been raised in this litigation and
18 that the Plaintiffs or any or all other Persons and entities whose claims are being released, or any
19 of them, do not know or suspect to exist, which, if known by him, her or it, might affect his, her
20 or its agreement to release the Released Parties or the Released Claims or might affect his, her or
21 its decision to agree, object or not to object to the Settlement. Upon the Effective Date, Plaintiff's
22 and all other Persons and entities whose claims are being released shall be deemed to have, and
23 shall have, expressly waived and relinquished, to the fullest extent permitted by law, the
24 provisions, rights, and benefits of § 1542 of the California Civil Code, which provides as follows:

25 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
26 WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO
27 EXIST IN HIS OR HER FAVOR AT THE TIME OF
28 EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR
HER MUST HAVE MATERIALLY AFFECTED HIS OR HER
SETTLEMENT WITH THE DEBTOR.

1 Upon the Effective Date, Plaintiffs and all other Persons and entities whose claims are being
2 released also shall be deemed to have, and shall have, waived any and all provisions, rights and
3 benefits conferred by any law of any state or territory of the United States, or principle of
4 common law, or the law of any jurisdiction outside of the United States, which is similar,
5 comparable or equivalent to § 1542 of the California Civil Code. Plaintiffs acknowledge that
6 they may discover facts in addition to or different from those that they now know or believe to be
7 true with respect to the subject matter of this release, but that it is their intention to finally and
8 forever to settle and release the Released Claims, notwithstanding any Unknown Claims they may
9 have, as that term is defined in this Paragraph.

10 1.21 "Verizon Wireless" means Cellco Partnership d/b/a Verizon Wireless, a Delaware
11 general partnership. This definition is not intended to include any billing intermediary (also
12 known as "aggregators"), such as Verisign, Inc., m-Qube, Inc., m-Blox, Inc., or third-party
13 mobile content providers.

14 1.22 "Verizon Wireless' Counsel" means the law firm of Morrison & Foerster LLP.

15 2. Changes in Business Practices; Confirmatory Discovery

16 2.1 Verizon Wireless will provide plaintiffs with confirmatory discovery concerning
17 the identity and number of persons affected by Disputed Charges and concerning Verizon
18 Wireless's current and previous business practices with regard to steps taken to reduce the risk of
19 Disputed Charges and what steps, if any, are feasible to further reduce such risk.

20 2.2 Verizon Wireless agrees to continue to engage in its current business practices
21 with respect to this issue, or such modified practices, if any, that Verizon Wireless later agrees to
22 implement, for a period of two years from the date of this Agreement. The parties acknowledge
23 that Verizon Wireless requires flexibility with respect to such practices in order to reflect the
24 rapidly evolving wireless communications industry, and shall have the right to institute different,
25 equally effective practices during the two-year period. The agreements set forth in this paragraph
26 shall terminate two years from the date of this Agreement.

27 2.3 The parties will engage in reasonable confirmatory discovery. Should the
28 confirmatory discovery reveal that the total amount of Disputed Charges was substantially greater

1 than estimated at the time of the mediation or that the effectiveness of the steps taken to reduce
2 Disputed Charges is inadequate, then at any time up to seven days following receipt of that
3 information, Plaintiff may withdraw from the settlement and the parties shall be restored to their
4 respective positions prior to the date of the mediation.

5 2.4 Should this Settlement be terminated for any reason, any information provided by
6 Verizon Wireless in the course of confirmatory discovery shall be returned to Verizon Wireless
7 and shall not be used for any purpose; provided however, that the termination of this Settlement
8 Agreement shall not shield from subsequent discovery any factual information provided in
9 connection with the negotiation of this Settlement that would ordinarily be discoverable but for
10 the attempted settlement.

11 3. Settlement Consideration

12 3.1 Verizon Wireless will provide one million dollars (\$1,000,000) to the Settlement
13 Class as further described below.

14 3.2 Settlement Class Members who paid Disputed Charges shall be entitled to a refund
15 or credit in the amount of fifteen dollars (\$15) or the *pro rata* amount described in paragraph 3.3
16 below, whichever is less ("Refund Amount"). To the extent that a Settlement Class Member
17 previously received a partial credit or refund, Verizon Wireless shall refund the amount of
18 Disputed Charges for which the Settlement Class Member did not previously receive a credit or
19 refund, up to a maximum of the Refund Amount. The Refund Amount shall be provided as
20 follows: (a) in the form of a credit on their bill or, in the sole discretion of Verizon Wireless, in
21 the form of a cash payment, for Settlement Class Members who are current Subscribers; (b) in the
22 form of a cash payment for those Settlement Class Members who are former Subscribers and who
23 are not delinquent on their closed accounts for an amount in excess of \$15; and (c) if a former
24 Subscriber is delinquent on his or her closed account, then that former Subscriber shall receive a
25 credit on the delinquent account in an amount equal to the Refund Amount that otherwise would
26 have been payable under the settlement or, in the sole discretion of Verizon Wireless, a cash
27 payment. Refunds or credits shall be issued within 60 days of the Effective Date.

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1 3.3 If full payment of claims submitted pursuant to Section 5.4 below would exceed
2 one million dollars (\$1,000,000), then each Class Member shall instead receive a *pro rata* share
3 of the one million dollars (\$1,000,000).

4 3.4 All cash payments issued to Settlement Class Members will state on the face of the
5 check that the check will expire and become null and void unless cashed within 90 days of the
6 date of issuance. To the extent that a check issued to a Settlement Class Member is not cashed
7 within 90 days of the date of issuance, such funds shall be added to the amounts to be distributed
8 *cy pres* pursuant to paragraph 3.5 below.

9 3.5 To the extent that valid claims submitted by Settlement Class Members total less
10 than one million dollars (\$1,000,000), the difference between the amount of the total claims and
11 one million dollars (\$1,000,000) (the "Remaining Funds") shall be distributed *cy pres* in the form
12 of handsets and minutes donated to the National Domestic Violence Hope Line, or similar
13 charitable organization(s) to be agreed upon by the parties. The Remaining Funds shall be valued
14 for purposes of this settlement based upon the current retail price of such handsets and minutes.

15 3.6 The handsets and minutes issued by Verizon Wireless will be subject to customary
16 terms and conditions, including charges for international and operator-assisted calls that may
17 reduce available call time. The Parties agree that Verizon Wireless will have no obligation for
18 such handsets or minutes that are not redeemed or used, that such handsets and minutes will not
19 constitute abandoned or unclaimed property, and will not be replaced or substituted for value if
20 lost or stolen.

21 4. Releases

22 4.1 The obligations incurred pursuant to this Stipulation shall be a full and final
23 disposition of the Action and any and all Released Claims, as against all Released Parties.

24 4.2 Upon the Effective Date, Plaintiffs, and each of them, shall be deemed to have,
25 and by operation of the Final Judgment and Order of Dismissal With Prejudice shall have, fully,
26 finally, and forever released, relinquished and discharged all Released Claims against the
27 Released Parties, and each of them.

28 5. Settlement Administration

