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6 Timothy A. Davis, Amy B. Blumenfield, Alan C. Ivar,  
and Michael Nunberg,, Individually and as Representatives  
7 for all others similarly situated and the General Public

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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA (UNLIMITED CIVIL)  
10 FOR THE COUNTY OF LOS ANGELES

11  
12 GRANT M. OPPERMAN, TIMOTHY A.)  
DAVIS, AMY B. BLUMENFIELD, ALAN C.)  
13 IVAR, MICHAEL NUNBERG, HOWARD)  
ZHAO, JOSHUA KANER, JOHN CHRISTIAN)  
14 VINCI, and SUNIL KAMATH, Individually and  
as Representatives for all others similarly  
15 situated and the General Public )

16 Plaintiffs, )

17 vs. )

18 CELLCO PARTNERSHIP, a Delaware General  
Partnership, and VERIZON WIRELESS)  
19 MESSAGING SERVICES, LLC, a Texas)  
company, both doing business as Verizon)  
20 Wireless, and DOES 1 through 300, Inclusive )

21 Defendants. )  
22

Case No. BC326764

*Before Honorable Robert L. Hess, Dept. 24*

**CLASS ACTION**

**STIPULATION AND (Proposed) ORDER TO  
FILE A SECOND AMENDED COMPLAINT**

Date Action Filed: December 30, 2004

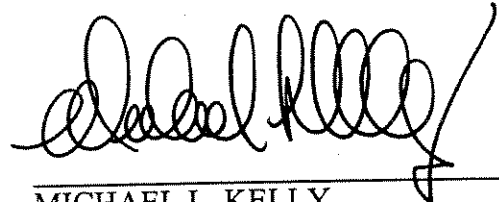
23 The parties have reached a tentative settlement in this matter which includes claims which  
24 have been made in actions filed in other jurisdictions. In order to implement the settlement, the parties  
25 have agreed that all claims should be consolidated in a single action, and have agreed that the action  
26 should be this action. Accordingly, the parties agree that the First Amended Complaint in this action  
27 be amended in order to incorporate the claims and parties made in the other actions. Accordingly,

28 IT IS HEREBY STIPULATED AND AGREED, by and between the parties, that 1) a Second

1 Amended Complaint, a copy of which is attached hereto as Exhibit "A", may be filed, 2) that the  
2 Second Amended Complaint be deemed to have been served, and 3) that Defendant's Answer on file  
3 herein to the First Amended Complaint be deemed to be an Answer to the Second Amended  
4 Complaint.

5 DATED: July 12, 2005

KIRTLAND & PACKARD LLP



8 By:

9 MICHAEL L. KELLY  
10 Attorneys for Plaintiffs Grant M. Opperman,  
11 Timothy A. Davis, Amy B. Blumenfeld, Alan C. Ivar,  
12 and Michael Nunberg, Individually and Representatives  
13 for all others similarly situated and the General Public

12 DATED: \_\_\_\_\_, 2005

MUNGER, TOLLES & OLSEN, LLP.

14 By:

15 RICHARD E. DROOYAN  
16 Attorneys for Defendant Verizon Wireless, Inc.

17 **ORDER**

18 IT IS SO ORDERED.

19 DATED:

21 \_\_\_\_\_  
22 Honorable Robert L. Hess  
23 Judge of the Superior Court

LAW OFFICES  
KIRTLAND & PACKARD LLP

1 Amended Complaint, a copy of which is attached hereto as Exhibit "A", may be filed, 2) that the  
2 Second Amended Complaint be deemed to have been served, and 3) that Defendant's Answer on file  
3 herein to the First Amended Complaint be deemed to be an Answer to the Second Amended  
4 Complaint.

5 DATED: July 8, 2005

KIRTLAND & PACKARD LLP

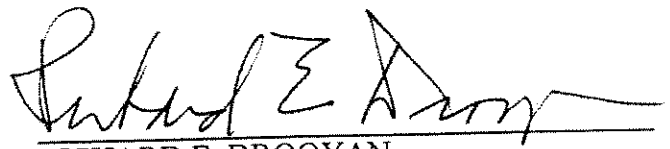
8 By:

MICHAEL L. KELLY  
Attorneys for Plaintiffs Grant M. Opperman,  
Timothy A. Davis, Amy B. Blumenfeld, Alan C. Ivar,  
and Michael Nunberg, Individually and Representatives  
for all others similarly situated and the General Public

12 DATED: July 15, 2005

MUNGER, TOLLES & OLSEN, LLP.

15 By:

  
RICHARD E. DROOYAN  
Attorneys for Defendant Verizon Wireless, Inc.

**ORDER**

18 IT IS SO ORDERED.

19 DATED:

Honorable Robert L. Hess  
Judge of the Superior Court

LAW OFFICES  
KIRTLAND & PACKARD LLP

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

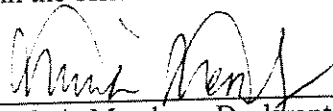
I, the undersigned, am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 2361 Rosecrans Avenue, Fourth Floor, El Segundo, California 90245. I am "readily familiar" with my employer's practice of collection and processing of correspondence and documents for mailing with the United States Postal Service, mailing via overnight delivery, transmission by facsimile machine, and delivery by hand.

On July 15, 2005, I served a copy of each of the documents listed below by placing said copies for processing as indicated herein as: **STIPULATION AND (PROPOSED) ORDER TO FILE A SECOND AMENDED COMPLAINT**

- (✓) U.S. MAIL: The correspondence or documents were placed in sealed, labeled envelopes with postage thereon fully prepaid on the above date and placed for collection and mailing at my place of business to be deposited with the U.S. Postal Service at El Segundo, California on this same date in the ordinary course of business.
- ( ) OVERNIGHT DELIVERY: The correspondence or documents were placed in sealed, labeled packaging for overnight delivery with all charges to be paid by my employer on the above date for collection and mailing at my place of business to be deposited in a facility regularly maintained by the overnight delivery carrier, or delivered to a courier or driver authorized by the overnight delivery carrier to receive such packages, on this date in the ordinary course of business.
- ( ) HAND DELIVERY: The correspondence or documents were placed in sealed, labeled envelopes and served by personal delivery to the party or attorney indicated herein or, if upon attorney, by leaving the labeled envelopes with a receptionist or other person having charge of the attorney's office.

PERSONS OR PARTIES SERVED: See attached Proof of Service List

- (✓) (State) I certify (or declare) under penalty of perjury that the foregoing is true and correct and that this declaration was executed on July 15, 2005.
- ( ) (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.



\_\_\_\_\_  
Maria Mendoza, Declarant

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**PROOF OF SERVICE LIST**  
**Grant M. Opperman, et al. vs. Cellco Partnership, et al.**

Richard E. Drooyan, Esq.  
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*In Association with Kirtland & Packard as counsel for plaintiffs individually and as Representatives for all others similarly situated and the General Public*

**COURTESY COPIES:**

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*Counsel for plaintiffs Joshua Kaner; John Christian Vinci; Sunil Kamath;*  
*in the Class Action Arbitration Suit, New York, NY*

**A**

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9 Attorneys for Grant M. Opperman, Timothy A. Davis, Amy B. Blumenfeld, Alan C. Ivar,  
10 Michael Nunberg, Joshua Kaner, John Christian Vinci, Sunil Kamath, and Howard Zhao,  
11 Individually and Representative for all others similarly situated and the General Public

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA (UNLIMITED CIVIL)  
13 FOR THE COUNTY OF LOS ANGELES

14 GRANT M. OPPERMAN, TIMOTHY A. ) **CASE NO. BC326764**  
15 DAVIS, AMY B. BLUMENFIELD, ALAN C. ) Case Filed: 12-30-04  
16 IVAR, MICHAEL NUNBERG, HOWARD ) Assigned to Hon. Robert L. Hess, Presiding  
17 ZHAO, JOSHUA KANER, JOHN CHRISTIAN ) Dept. 24  
18 VINCI, and SUNIL KAMATH, Individually )  
19 and as Representatives for all others similarly )  
20 situated and the General Public,, )

**SECOND AMENDED COMPLAINT FOR:**

21 Plaintiffs,

22 vs.

23 CELLCO PARTNERSHIP, a Delaware General )  
24 Partnership, and VERIZON WIRELESS )  
25 MESSAGING SERVICES, LLC, a Texas )  
26 company, both doing buisness as Verizon )  
27 Wireless, and DOES 1 through 300, Inclusive,, )

28 Defendants.

- 29 I. UNFAIR COMPETITION  
30 (VIOLATION OF BUSINESS AND  
31 PROFESSIONS CODE SECTIONS  
32 17200, ET SEQ.)  
33 II. UNTRUE AND MISLEADING  
34 ADVERTISING (VIOLATION OF  
35 BUSINESS AND PROFESSIONS  
36 CODE SECTIONS 17500, ET SEQ.)  
37 III. VIOLATIONS OF CALIFORNIA  
38 CONSUMERS LEGAL REMEDIES  
39 ACT  
40 IV. FRAUD AND DECEIT  
41 V. DECLARATORY RELIEF

**REQUEST FOR JURY TRIAL**

42 Individual and Representative Plaintiffs Grant M. Opperman, Timothy A. Davis, Amy B.  
43 Blumenfeld, Alan C. Ivar, Michael Nunberg, Howard Zhao, Joshua Kaner, John Christian Vinci,  
44 and Sunil Kamath on behalf of themselves and all others similarly situated, and on behalf of the  
45 General public, allege:

46 //

47 //

NATURE OF THE CASE

1  
2           1.       Cellco Partnership is a Delaware general partnership and Verizon Wireless  
3 Messaging Services, LLC is a Texas company, both of which, together with Verizon Wireless  
4 Service, LLC, (previously sued herein as Doe 1) and Does 2 through 100, are doing business  
5 throughout the United States and within the State of California as Verizon Wireless (collectively  
6 hereinafter referred to as "Verizon Wireless"). Verizon Wireless provides wireless communication  
7 services, including cellular telephone services. In this class action lawsuit, Plaintiffs and the Class  
8 seek a remedy against Verizon Wireless and Does 1-300, inclusive, (hereinafter collectively  
9 referred to as "Verizon Wireless" or "Defendants") for unfair business practices, fraud and deceit  
10 and violations of the California statutory and common law.

11           2.       As detailed below, Verizon Wireless wrongfully and unfairly deceived its cellular  
12 telephone service customers by advertising and selling the expensive Motorola, Inc., V710 cellular  
13 phone (hereinafter "V710") with the implied promise it had numerous Bluetooth® capabilities  
14 (hereinafter "Bluetooth® capabilities"), but had no intention of selling, and did not sell, the phone  
15 with these Bluetooth® capabilities, to the detriment of its customers. Verizon Wireless  
16 intentionally disabled the majority of the Bluetooth® capabilities, which are inherent features of  
17 the V710 as manufactured by Motorola, Inc., before selling them to its customers. At least  
18 thousands of customers have been affected by this practice.

19           3.       Verizon Wireless is an extremely sophisticated merchant and is aware of the  
20 unlawful, unfair and deceptive practices challenged in this action.

21           4.       Plaintiffs are informed and believe that Verizon Wireless has enjoyed enormous  
22 financial gains by marketing the popular V710 phone as a fully Bluetooth® capable phone, and  
23 then delivering it to its customers who purchased the V710 without informing those customers that  
24 almost all of its Bluetooth® capabilities were disabled, resulting in a degraded phone which  
25 requires the Verizon customer to use other Verizon services at additional cost in place of the  
26 Bluetooth® capabilities that were represented to be part of the phone's Bluetooth® features.

27           5.       Plaintiffs seek to remedy the harm caused by Verizon Wireless' scheme to defraud  
28 its customers. As set forth below, Plaintiffs, and all those similarly situated, should be awarded

1 compensatory damages. Additionally, because Verizon Wireless knowingly defrauded its  
2 customers by marketing a phone with almost all of its Bluetooth® capabilities disabled, and  
3 because Verizon Wireless collected additional revenue from this fraudulent practice, Verizon  
4 Wireless' conduct constitutes willful, deceptive and oppressive conduct, entitling Plaintiffs and the  
5 Class to an award of punitive damages

#### 6 JURISDICTION AND VENUE

7 6. This court has jurisdiction over this action pursuant to Code of Civil Procedure  
8 Section 410.10. Venue is proper pursuant to Code of Civil Procedure Section 395.5 in that  
9 Verizon Wireless does a significant amount of business in and has committed fraud in the County  
10 of Los Angeles. The allegations and claims for relief set forth herein arise out of acts committed  
11 in this state and violate California's unfair competition law and common law.

#### 12 THE PARTIES

13 7. Plaintiff Grant M. Opperman is a resident of Alameda County, California, and a  
14 member of the class injured by Defendants' conduct. Plaintiff Timothy A. Davis is a resident of  
15 Kern County, California, and a member of the class injured by Defendants' conduct. Plaintiffs  
16 Amy B. Blumenfield and Michael Nunberg are residents of Los Angeles County, California, and  
17 members of the class injured by Defendants' conduct. Plaintiff Alan C. Ivar is a resident of  
18 Orange County, California, and a member of the class injured by Defendants' conduct. Plaintiff  
19 Howard Zhao is a resident of Strongsville, Ohio, and a member of the class injured by Defendants'  
20 conduct. Plaintiff Joshua Kaner is a resident of Merrick, New York, and a member of the class  
21 injured by Defendants' conduct. Plaintiff John Christian Vinci is a resident of New York, New  
22 York, and a member of the class injured by Defendants' conduct. Plaintiff Sunil Kamath is a  
23 resident of Bay Shore, New York, and a member of the class injured by Defendants' conduct.  
24 Plaintiffs also bring these claims on behalf of the General Public pursuant to Business &  
25 Professions Code Sections 17200 *et seq.*, 17500 *et seq.* and California Civil Code Sections 1750,  
26 1770 and 1781.

27 8. Defendant Cellco Partnership is a Delaware general partnership. Defendant Verizon  
28 Wireless Messaging Services, LLC is a Texas company. Defendant Verizon Wireless Service,

1 LLC, (previously sued herein as Defendant Doe 1), is a Delaware Limited Liability Company:  
2 Cellco Partnership, Verizon Wireless Messaging Services, LLC, and Verizon Wireless Services,  
3 LLC, are authorized to do and, in fact, doing business in the State of California as Verizon  
4 Wireless.

5 9. Does 2 through 300 are persons and/or business entities whose identities are  
6 unknown to Plaintiffs at this time, and are controlled by, and/or agents of, and/or employees of,  
7 and/or affiliated with Defendants. Plaintiffs are ignorant of the true names and capacities of the  
8 Doe Defendants sued herein under fictitious names Does 2 through 300, and they are sued  
9 pursuant to Code of Civil Procedure Section 474. When Plaintiffs become aware of the true  
10 names and capacities of the Doe Defendants, Plaintiffs will amend this Complaint to state their  
11 true names and capacities.

12 10. At all times herein mentioned, Defendants, and each of them, were the agents,  
13 principals, servants, employees and subsidiaries of each of the remaining Defendants and were at  
14 all times acting within the purpose and scope of such agency, service and employment and  
15 directed, consented, ratified, permitted, encouraged and approved the acts of each remaining  
16 Defendant.

17 **FACTUAL ALLEGATIONS**

18 11. Verizon Wireless advertises and sells the expensive V710 phone (in fact marketed  
19 as its premium phone) for between approximately \$250 and \$515, depending on promotions and  
20 whether the consumer would sign up for a cellular service agreement in connection with the  
21 purchase of the phone. The high price of the phones was justified because they were equipped  
22 with advanced technologies, specifically including the Bluetooth® capabilities. In the wireless  
23 phone industry, Bluetooth® is generally known as a technology that allows consumers to synch up  
24 their Bluetooth® enabled mobile phone to laptops, headsets, car kits and PDA's, all without wires.  
25 This technology allows the easy wireless transfer and access of information from up to 10 meters,  
26 allows the consumer to wirelessly answer calls, and enables access to the internet through the  
27 Bluetooth® mobile phone. This is how Motorola, Inc., the manufacturer of the V710, describe  
28

1 Bluetooth® technology.<sup>1</sup>

2 12. Verizon Wireless advertises the V710 phone as a fully Bluetooth® enabled phone.  
3 Their product description of the V710 states, "Bluetooth® wireless technology, you can make  
4 hands-free, eyes-free calls, and connect to your PC or PDA whenever and wherever you want."<sup>2</sup>  
5 In a press release, Verizon Wireless and Motorola stated, "For the road warrior: Enabled with  
6 Bluetooth Wireless connectivity, the Motorola V710 allows users to connect to their laptops for  
7 seamless sharing of vital information or to synch up with Bluetooth enabled accessories..."<sup>3</sup>  
8 Verizon Wireless salespersons also directed potential purchasers to a Motorola internet site which  
9 set forth the full Bluetooth functionality of the V710.

10 13. However, at the time, Verizon Wireless advertised and sold these premium phones,  
11 it had no intention of selling the V710 with the Bluetooth® capabilities its consumers expected  
12 from the product description and or advertising, and disabled almost all of the Bluetooth®  
13 technology in the phone so consumers would be forced to pay for Verizon Wireless services, such  
14 as "Get-it-Now" and "PIX Place Service", services which the consumers would have had for free  
15 had the V710's Bluetooth® capabilities not been disabled by Verizon Wireless. These changes,  
16 which degraded the quality of the V710 premium phone, made the premium phones, and the  
17 various and expensive accessories customers purchased to use with these phones, worthless.  
18 Verizon Wireless disabled these Bluetooth® capabilities without regard to the effect that it would  
19 have on the thousands of customers who had purchased these premium phones. If the customers  
20 wanted the features the V710 would have provided if the Bluetooth® capabilities were not  
21 disabled, they would have to spend additional funds with Verizon Wireless services, such as \$0.25  
22 to transfer each picture file taken from their V710 phone.

23 //

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25 <sup>1</sup>See Exhibit "A", a printout of Motorola, Inc.'s description of Bluetooth® technology from  
26 www.motorola.com.

27 <sup>2</sup>See Exhibit "B", a section taken from Verizon Wireless' internet product description of  
the V710 phone.

28 <sup>3</sup>A copy of the press release is attached hereto as Exhibit "C".

CLASS ACTION ALLEGATIONS

1  
2 14. Plaintiffs bring this action on their own behalf and on behalf of all others in  
3 similarly situated as members of the proposed Plaintiff Class. The proposed Plaintiff Class that  
4 Plaintiffs represent is defined as follows:

5 All customers who activated Verizon Wireless cellular service for a Motorola V710  
6 telephone on or before January 31, 2005.

7 Excluded from the Class are Defendants, and entities in which Defendants have a controlling  
8 interest, any employees, officers, directors of Defendants, and any legal representatives, assigns,  
9 successors of Defendants, and any judge assigned to hear this case.

10 15. This action is brought and may be properly maintained as a class action pursuant to  
11 California Code of Civil Procedure Section 382 and Civil Code Section 1798.82, as well as under  
12 Federal Rule of Civil Procedure 23(a)(1-4), 23(b)(1)(2) or (3), and case law thereunder, to which  
13 the California trial courts have been directed for guidance by the California Supreme Court.

14 16. Members of the Class are so numerous, consisting of thousands of individuals, that  
15 the joinder of all such persons is impracticable and that the disposition of their claims in a class  
16 action rather than in individual actions will benefit the parties and the court. The numerosity of  
17 the Class is clearly satisfied under California Code of Civil Procedure Section 382, Civil Code  
18 Section 1781(b)(1), and Federal Rule of Civil Procedure 23(a)(1).

19 17. There is a well-defined community of interests in the questions of law and fact  
20 involved affecting the Plaintiff Class, satisfying California Code of Civil Procedure Section 382,  
21 Civil Code 1781(b)(2), and Federal Rule of Civil Procedure 23(a)(2). Common questions of law  
22 and fact predominate over the questions affecting only individual Class members. The claims of  
23 the Plaintiffs are typical of those of the Class and Plaintiffs will fairly and adequately represent the  
24 interests of the class.

25 18. Plaintiffs' claims are typical of those of each class member and Plaintiffs, like other  
26 members, have been exposed to the same violations and conduct, and are entitled to relief under

27 //  
28 the same causes of actions as other members of the Class, satisfying California Civil Code Section

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1 1781(b)(3), and Federal Rule of Civil Procedure 23(a)(3).

2 19. Plaintiffs are adequate representatives of the Class as their interests do not conflict  
3 with the interests of the members of the Class. They have retained counsel competent and  
4 experienced in complex class action litigation, and they intend to vigorously prosecute this action.  
5 The interests of members of the Class will be fairly and adequately protected by Plaintiffs and  
6 their counsel.

7 20. There is no plain, speedy, or adequate remedy other than by maintenance of this  
8 class action, making it economically unfeasible to pursue remedies other than as a class action.  
9 Consequently, there would be a failure of justice but for the maintenance of the present class  
10 action.

11 21. The class action is superior to other available means for fair and efficient  
12 adjudication of claims. Individual prosecutions would prove burdensome and expensive given the  
13 extensive litigation necessitated by the claims presented. Additionally, it would be virtually  
14 impossible for the members of the Class to individually seek redress for wrongs. Even if  
15 individual class members could afford individual prosecution, the judicial systems cannot.  
16 Individual prosecution presents a potential for inconsistent or contradictory judgments. Individual  
17 litigation of the complex legal and factual issues presented increases delay and expense for all  
18 parties and the courts. Conversely, class action treatment will result in substantial benefits to the  
19 litigants, courts and public by permitting the courts to address and resolve claims based upon a  
20 single set of proof in a case where the individual costs of litigating these claims would make class  
21 action litigation more economical and cost effective than individual litigation.

22 22. The prosecution of individual remedies by members of the Plaintiff Class could  
23 tend to establish inconsistent standards of conduct for the Defendants and result in the impairment  
24 of class members' rights and disposition of their interests through actions to which they were not  
25 parties.

26 23. In the alternative, this action is certifiable under the provisions of Rule 23(b)(1)(2)  
27 and/or (b)(2) of the Federal Rules of Civil Procedure, which have been found applicable to the  
28 State of California, as (a) the prosecution of separate actions by the individual members of the

1 Class would create a risk of inconsistent or varying adjudications with respect to individual Class  
2 members that would establish incompatible standards for Defendant; (b) the prosecution of  
3 separate actions by individual Class members would create a risk of adjudications with respect to  
4 Verizon Wireless that would be dispositive of the interests of other Class members not party to the  
5 adjudication, or substantially impair or impede such Class members ability to protect their  
6 interests; and/or (c) defendants have acted on grounds generally applicable to the class, making  
7 appropriate final declaratory or injunctive relief with respect to the Class as a whole.

8 24. The total amount of damages suffered by each individual member of the class is  
9 less than \$75,000.00.

10 **FIRST CAUSE OF ACTION**

11 **(Unfair Competition-Violation of Business and Professions Code Sections 17200, *et. seq.*)**

12 **(Against All Defendants)**

13 25. Plaintiffs hereby incorporate the preceding allegations in paragraphs 1 through 24  
14 as though set forth in full herein.

15 26. Business and Professions Code Sections 17200, *et seq.*, of the Unfair Competition  
16 Law define unfair business competition to include any "unlawful, unfair and fraudulent" business  
17 act or practice, as well as any "unfair, deceptive, untrue or misleading" advertising.

18 27. Pursuant to Business and Professions Code Sections 17200 *et seq.*, and the common  
19 law of unfair competition, the business practices of Defendants described above are, and have  
20 been, unlawful, unfair and deceptive and have a tendency to mislead the general public.

21 28. Plaintiffs, on behalf of themselves, and on behalf of the general public, seek all  
22 remedies and relief pursuant to the provisions of Business and Professions Code Sections 17200 *et*  
23 *seq.*, including, inter alia, injunctive relief, restitution and the disgorgement of money acquired by  
24 means of the unlawful and unfair business practices alleged above.

25 29. As a result of Defendants' unlawful and unfair business practices, Plaintiffs and the  
26 Class have suffered actual monetary damages, including, but not limited to, the money they spent  
27 to purchase the V710 phones and related cellular service plans, in an amount that will be  
28 established during the trial. Plaintiffs and the Class will also suffer irreparable harm if Defendants'

1 conduct is not enjoined.

2 30. By committing the acts and practices alleged above, Verizon Wireless has been,  
3 and continues to be, engaged in unlawful and/or unfair business practices within the meaning of  
4 the Business and Professions Code Sections 17200, *et seq.*

5 31. The policies, acts and practices employed by Verizon Wireless, as described herein,  
6 are known, implemented and endorsed by Verizon Wireless.

7 32. Defendants' conduct is willful, deceptive, and oppressive, thereby entitling  
8 Plaintiffs and the Class to an award of punitive damages.

9 **SECOND CAUSE OF ACTION**

10 **(Untrue and Misleading Advertising-Violation of**  
11 **Business and Professions Code Sections 17500, *et seq.*)**

12 **(Against All Defendants)**

13 33. Plaintiffs hereby incorporate the preceding allegations in paragraphs 1 through 24  
14 as though set forth in full herein.

15 34. Beginning at an exact date unknown to Plaintiffs, Defendants have committed acts  
16 of untrue and misleading advertising, as defined by Business and Professions Code Sections  
17 17500, *et seq.*, by marketing and selling the high-priced V710 cellular phone as fully Bluetooth®  
18 capable and then disabling most of its Bluetooth® capabilities, which adversely affects the  
19 usability of the phone, resulting in a significantly degraded phone and phone services, forcing the  
20 customer to pay for additional services that would not otherwise be required if the Bluetooth®  
21 capabilities were not disabled by Verizon Wireless.

22 35. The acts of untrue and misleading advertising described above present a continuing  
23 threat to members of the public in that consumers continue to purchase Verizon Wireless cellular  
24 telephone and service plans.

25 36. As a result of Defendants' untrue and misleading advertising practices, Plaintiffs  
26 and the Class have suffered actual monetary damages, including, but not limited to, the money  
27 they spent to purchase the V710 phones and related cellular service plans, in an amount that will  
28 be established during the trial. Plaintiffs and the Class will also suffer irreparable harm if

1 Defendants' conduct is not enjoined.

2 37. The general public has no other adequate remedy of law.

3 **THIRD CAUSE OF ACTION**

4 **(Violations of California Consumers Legal Remedies Act)**

5 **(Against All Defendants)**

6 38. Plaintiffs hereby incorporate the preceding allegations of paragraphs 1 through 24  
7 as though set forth in full herein.

8 39. The California Consumers Legal Remedies Act, Civil Code Sections 1750, *et seq.*,  
9 was enacted to protect consumers against unfair business practices, unfair competition, and false  
10 advertising.

11 40. Through the above acts by Verizon Wireless, Defendants have violated the  
12 following subsections of Civil Code Section 1770(a): (2), (5), (7), (9), (14).

13 **Notice Pursuant to Civil Code 1782**

14 **Plaintiffs hereby demand that within 30 days from service of this**  
15 **Complaint, defendants correct, repair, replace or otherwise rectify the**  
16 **deceptive practices complained of herein for the entire class pursuant to**  
17 **California Civil Code Section 1770. Failure to do so will result in Plaintiffs**  
18 **amending this Complaint to seek damages for such deceptive practices**  
19 **pursuant to California Civil Code Section 1782.**

20 41. As a result of Defendants' untrue and misleading advertising practices, Plaintiffs  
21 and the Class have suffered actual monetary damages, including, but not limited to, the money  
22 they spent to purchase the V710 phones and related cellular services. However, Plaintiffs and the  
23 class do not currently seek to recover these damages, but reserve the right to amend this Complaint  
24 pursuant to Civil Code Section 1782(d) if appropriate.

25 42. Plaintiffs and the Class will suffer irreparable harm if Defendants' conduct is not  
26 enjoined.

27 **FOURTH CAUSE OF ACTION**

28 **Fraud and Deceit - Suppression of Fact - (Civil Code Section 1710)**

(Against All Defendants)

1  
2 43. Plaintiffs hereby incorporate the preceding allegations in paragraphs 1 through 24  
3 as though set forth in full herein.

4 44. Verizon Wireless deceptively represented to Plaintiffs and the Class that if they  
5 purchased the V710 phones, they would be provided certain Bluetooth® technology and features  
6 for the anticipated life of the premium phone. Based on these representations, Plaintiffs and the  
7 Class purchased the V710 cellular phones and service plans from Verizon Wireless.

8 45. At the time Verizon Wireless made these promises and representations, it had no  
9 intention of keeping them.

10 46. Verizon Wireless proceeded, notwithstanding, to modify or cause the modification  
11 of the V710 phone in such a way or ways that it knew would make these premium phones suffer  
12 degraded value, so as to make the phones and their expensive accessories unusable or worthless  
13 due to the absence of disabled Bluetooth® features. Verizon Wireless continued to market the  
14 V710 premium phones as Bluetooth® capable, notwithstanding its deliberate disabling of these  
15 capabilities. Verizon Wireless attempted to conceal its failure to keep its promises and live up to  
16 its representations by selling the V710 phone without clarification to its consumers that Verizon  
17 Wireless had intentionally disabled almost all of the phone's Bluetooth® capabilities. Verizon  
18 Wireless knew all the while that for these customers to obtain the services the Bluetooth®  
19 capabilities would have provided the consumers for free, they would need to buy separate and  
20 continual services from Verizon Wireless. Furthermore, Verizon Wireless knew that all of the  
21 additional and compatible Bluetooth® enabled accessories purchased by their consumers would be  
22 useless with the modified V710 phone.

23 47. These false representations were made in order to induce Plaintiffs and the Class to  
24 purchase V710 phones and either continue or extend their service with Verizon Wireless or  
25 purchase new service, and induce Plaintiffs and the Class to purchase separate services from  
26 Verizon Wireless, even though Verizon Wireless defrauded their customers and represented that  
27 the V710 phone had Bluetooth® capabilities.

28 48. At the time Plaintiffs and the Class purchased their cellular phones from Verizon

1 Wireless, they did not know the falsity of the above representations and acted and continued to act  
2 in justifiable reliance on the representations and promises herein.

3 49. As a result of Defendants' deceptive practices, Plaintiffs and the Class have suffered  
4 actual monetary damages, including, but not limited to, the money they spent to purchase the  
5 V710 phones and related cellular service.

6 50. The aforementioned conduct of the Defendants were intentional misrepresentations,  
7 and/or deceitful concealment of the material facts known to the Defendants, and made with the  
8 intention on the part of the Defendants of depriving Plaintiffs and the Class of property or legal  
9 rights, otherwise causing injury and was despicable conduct and subjected Plaintiffs and the Class  
10 to cruel and unjust hardship and conscious disregard of the Plaintiffs' rights so as to justify an  
11 award of exemplary and punitive damages.

12 **FIFTH CAUSE OF ACTION**

13 **(Declaratory Relief)**

14 **(Against All Defendants)**

15 51. Plaintiffs hereby incorporate the preceding allegations in paragraphs 1 through 50  
16 as though set forth in full herein.

17 52. An actual controversy exists between Plaintiffs and the Class and Defendants  
18 concerning their respective rights and duties. Accordingly, Plaintiffs and the Class request class-  
19 wide equitable relief in the form of a court determination of the rights of Plaintiffs and the Class  
20 and the corresponding rights of the Defendants.

21 53. Plaintiffs are informed and believe, and on that basis allege, that Defendants  
22 dispute these contentions.

23 54. A judicial declaration is necessary and appropriate to avoid a multiplicity of actions  
24 in the future.

25 **PRAYER FOR RELIEF**

26 WHEREFORE, the individual and representative Plaintiffs request of this Court the  
27 following monetary and declaratory relief for themselves and all others similarly situated:

28 1. For an order certifying the proposed Class herein under Code of Civil Procedure

- 1 Section 382 and Civil Code Section 1781 and appointing Plaintiffs and their undersigned counsel  
2 of record to represent the Class;
- 3 2. On Plaintiffs' First through Fourth Causes of Action, injunctive relief restraining  
4 Defendants, their agents, servants, employees, successors and assigns, and all others in concert and  
5 privity with them, from violating state laws and from engaging in unfair and deceptive trade  
6 practices;
- 7 3. For an order requiring Defendants to restore any money or property that Defendants  
8 may have acquired as a result of any act or practice constituting unfair competition and/or false  
9 advertising under Business & Professions Code Section 17200, *et. seq.* and or Business &  
10 Professions Code Section 17500, *et. seq.* ;
- 11 4. For distribution of any moneys recovered on behalf of the general public or the  
12 class of similarly situated consumers via fluid recovery or cy pres recovery, where necessary, to  
13 prevent Defendants from retaining the benefits of their wrongful conduct;
- 14 5. For permanent injunctive relief preventing each Defendant from engaging in any  
15 act or practice constituting unfair competition under Business & Professions Code Sections 17200  
16 *et seq.* and/or false advertising under Business & Professions Code Sections 17500 *et seq.* and  
17 requiring each Defendant to take appropriate acts needed to prevent future deception;
- 18 6. For compensatory and consequential damages suffered by Plaintiffs and the  
19 members of the Class pursuant to their First, Second and Fourth Causes of Action;
- 20 7. For restitution for the loss of benefits earned by Plaintiffs and the Class pursuant to  
21 their First, Second and Fourth Causes of Action;
- 22 8. Exemplary damages pursuant to the First, Second and Fourth Causes of Action;
- 23 9. Restitution and disgorgement of money received by Defendants as a result of their  
24 wrongful conduct pursuant to their First, Second and Fourth Causes of Action;
- 25 10. For a declaration of the respective rights of the parties pursuant to the Fifth Cause  
26 of Action;
- 27 11. For attorneys' fees;
- 28 12. For pre-judgment interest;





DATED: July 11, 2005

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ROBERT M. CHURELLA

DATED: July 11, 2005

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situated and the General Public*

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DATED: July 11, 2005

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and Representative for all others similarly  
situated and the General Public*

LAW OFFICES  
KIRTLAND & PACKARD LLP

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## GET CONNECTED WITHOUT BEING ATTACHED

Enter the world of Bluetooth® wireless technology. No wires. No limits. Now you can sync up any Bluetooth® enabled mobile phone to laptops to headsets to car kits and PDAs, all without wires. Easily transfer and access information from up to 10 metres. Effortlessly and wirelessly answer calls. Access the Internet using your mobile phone. Simpler, smarter and seamless.

Select your language ▾



B

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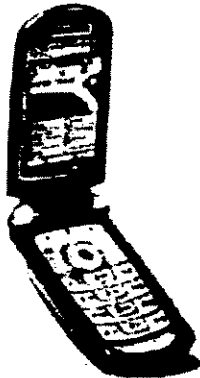
[Skip to main content](#), [Skip to navigation](#).



The Motorola V710 is a phone and a whole lot more. Featuring an integrated 1.2 megapixel camera, video capture, playback and messaging to any email address, and Mobile Web 2.0, it's a phone that is designed for the way you live. And with [Bluetooth® wireless technology](#), you can make hands-free, eyes-free calls, and connect to your PC or PDA whenever and wherever you want.

**Existing customers**  
Log in to My Account to order this phone for your Verizon Wireless number.  
[Get the Details](#)

[Back to Phones](#)



~~\$299.99 price~~  
~~- 50.00 online discount~~

**\$249.99**  
2-year contract

**\$349.99**  
1-year contract

[Larger View](#)

#### Basic Information

Talk time: 173 minutes  
Standby time: 165 hours  
Size: 3.7H x 1.9W x 0.9D inches  
Weight: 4.5 oz

#### Basic Features

- 1.2 megapixel camera with flash
- Record and Send 15second videos
- Connectivity via [Bluetooth](#)
- 500 Phone Book Entries
- Speakerphone
- Personal Organizer
- Voice Activated Dialing
- Meets FCC [SAR](#) limit. Manufacturer's highest FCC reported SAR 1.40 at ear, 1.07 on body. Actual SAR may vary.



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## **Motorola and Verizon Wireless Announce the Upcoming Debut of the Eagerly Awaited Motorola V710**

*Nation's First CDMA Handset Delivering Megapixel Camera and Bluetooth® Wireless Technology Arrives at Verizon Wireless*

*More than 40,000 Consumers Pre-Register for information*

LIBERTYVILLE, Ill. and Bedminster, NJ, - July 20<sup>th</sup>, 2004 - Motorola, Inc. (NYSE: MOT), a global leader in wireless communications, and Verizon Wireless, the leading wireless service provider in the U.S., today announced that the much sought after Motorola V710 is now shipping and will be available at Verizon Wireless stores nationwide in August. As the first handset in the US to deliver a 1.23 megapixel camera and Bluetooth connectivity, the Motorola V710 delivers what mobile consumers want.

Since its unveiling during the 2004 Cellular Telecommunication and Internet Association show in March, the Motorola V710 has been turning heads. More than 40,000 people have pre-registered for product information at [hellomoto.com/producer](http://hellomoto.com/producer). What's driving the excitement? The model V710 is a trailblazing CDMA mobile device, delivering multimedia features, advanced connectivity technology and high quality, easy to use voice and speaker functionality – all in a sleek, stylish and sophisticated design.

"This product is the best of CDMA from Motorola to date. Based on pre-launch interest, we believe consumers agree," said Tim Cawley, Senior Vice President and General Manager, Motorola CDMA Product Group. "The model V710 gives Verizon Wireless users the ideal balance between efficient productivity and mobile fun – it's a great handset."

"The Motorola V710 is a great addition to our mobile line-up," said John Stratton, vice president and chief marketing officer for Verizon Wireless. "This device is the perfect complement to the many downloadable data offerings from Verizon Wireless' GETIT NOW service."

**For the media lover:** Motorola V710 users can take 1.23 megapixel still photos for printing and sharing, and can capture video with sound for viewing sending. The product's 2.2" vibrant color display makes viewing of images and video a true-to-life experience the perfect complement to Verizon Wireless' powerful Get it Now® virtual store

**For the road warrior:** Enabled with Bluetooth Wireless connectivity, the Motorola V710 allows users to connect to their laptop for seamless sharing of vital information or to synch up with Bluetooth-enabled accessories such as the Motorola HS810 headset or the HF800 speakerphone for hands-free communications. Additional hands-free features include speaker independent speech recognition technology for one-touch easy dialing, and an office quality speakerphone for those must have conference calls.

### **The Motorola V710 Features Include:**

- 1.23 Megapixel Camera for images you want to keep
- Video Capture and playback for those moving memories
- Bluetooth Connectivity for seamless connectivity
- Speaker Independent Voice Dialing for easy dialing
- Office quality speaker phone for keeping your hands free
- Stereo sound via headset when you don't want to miss a sound
- TransFlash Memory Expansion Slot to bring your media with you
- WAP 2.0 for enhanced web browsing
- BREW 2.1 for applications and content download
- Large 2.2" Color Display for a rich mobile viewing

### **Pricing and Availability**

The Motorola V710 is expected to be available at Verizon Wireless stores in August 2004 for \$249 after a \$70 rebate with a two-year service agreement. Please visit [hellomoto.com/producer](http://hellomoto.com/producer) for more details on the Motorola V710

### **About Motorola**

Motorola, Inc. (NYSE: MOT) is a global leader in wireless, broadband and automotive communications technologies that help make life smarter, safer, simpler, synchronized and fun. Sales in 2003 were U.S. \$27.1 billion. Motorola creates innovative technological solutions that benefit people at home, at work and on the move. The company also is a progressive corporate citizen dedicated to operating ethically, protecting the environment and supporting the communities in which it does business. For more information: [www.motorola.com](http://www.motorola.com)

###

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**Note to Editors:** For more information on the model V710 and downloadable high-resolution images, please visit [www.motorola.com/motoinfo](http://www.motorola.com/motoinfo)

For free B-roll/video content on the Motorola V710, please log onto [www.thenewsmarket.com/motorola](http://www.thenewsmarket.com/motorola) to preview and request video. You can receive broadcast-standard video digitally or by video.

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PROOF OF SERVICE  
STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I, the undersigned, 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 2361 Rosecrans Avenue, Fourth Floor, El Segundo, California 90245. I am "readily familiar" with my employer's practice of collection and processing of correspondence and documents for mailing with the United States Postal Service, mailing via overnight delivery, transmission by facsimile machine, and delivery by hand.

On July 15, 2005, I served a copy of each of the documents listed below by placing said copies for processing as indicated herein as: **SECOND AMENDED COMPLAINT FOR:**  
**1. UNFAIR COMPETITION (VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTIONS 17200, ET SEQ.); 2. UNTRUE AND MISLEADING ADVERTISING (VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTIONS 17500, ET SEQ.); 3. VIOLATIONS OF CALIFORNIA CONSUMERS LEGAL REMEDIES ACT; 4. FRAUD AND DECEIT; 5. DECLARATORY RELIEF REQUEST FOR JURY TRIAL**

U.S. MAIL: The correspondence or documents were placed in sealed, labeled envelopes with postage thereon fully prepaid on the above date and placed for collection and mailing at my place of business to be deposited with the U.S. Postal Service at El Segundo, California on this same date in the ordinary course of business.

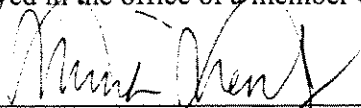
OVERNIGHT DELIVERY: The correspondence or documents were placed in sealed, labeled packaging for overnight delivery with all charges to be paid by my employer on the above date for collection and mailing at my place of business to be deposited in a facility regularly maintained by the overnight delivery carrier, or delivered to a courier or driver authorized by the overnight delivery carrier to receive such packages, on this date in the ordinary course of business.

HAND DELIVERY: The correspondence or documents were placed in sealed, labeled envelopes and served by personal delivery to the party or attorney indicated herein or, if upon attorney, by leaving the labeled envelopes with a receptionist or other person having charge of the attorney's office.

PERSONS OR PARTIES SERVED: See attached Proof of Service List

(State) I certify (or declare) under penalty of perjury that the foregoing is true and correct and that this declaration was executed on July 15, 2005.

(Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

  
\_\_\_\_\_  
Maria Mendoza, Declarant

