

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

FILED
CENTRAL

JAN 18 2006

4 Attorneys for Defendants Cellco Partnership doing
5 business as Verizon Wireless and Verizon Wireless
6 Messaging Services

LA SUPERIOR COURT

FILED
LOS ANGELES SUPERIOR COURT

JAN 18 2005

BY  DEPUTY

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF LOS ANGELES**

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

13 Plaintiffs,

14 vs.

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

19 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 and directing that notice be given to the members of the Settlement Class.

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

13 WHEREAS, prior to the Final Approval Hearing, declarations were filed with the
14 Court stating that on October 9, 2005, the Settlement Administrator sent the Notice and Claim
15 Form packets to 241,088 Verizon Wireless customers who activated Verizon Wireless cellular
16 service for a Motorola V710 telephone on or before January 31, 2005.

17 WHEREAS, Settlement Class Members who were sent this Notice and/or who
18 submitted claims on or before December 9, 2005, were therefore notified of their right to appear
19 at the hearing in support of or in opposition to the proposed Settlement, the award of attorneys’
20 fees and expenses to Class Counsel, and the payment of incentive awards.

21 WHEREAS, Verizon Wireless has advised the Court that as a result of an
22 inadvertent error, not all of the Settlement Class Members received the required Notice and Claim
23 Form packet.

24 WHEREAS, the Settlement Administrator has filed a declaration with the Court
25 stating that on January 6, 2006 an additional 106,151 Notices and Claim Form packets were
26 mailed to Settlement Class Members who had not been mailed the original Notice and Claim
27 Form packets.

28 WHEREAS, a Final Approval Hearing was held on January 17, 2006, at which no

1 objectors appeared and the Court considered all properly filed written objections and heard
2 argument from the parties' counsel.

3 WHEREAS, the Court has set March 16, 2006, for a second Final Approval
4 Hearing to hear any objections to the Settlement from the additional Settlement Class Members to
5 whom the Notice and Claim Form packets were mailed on January 6, 2006, and had not
6 submitted claims on or before December 9, 2005, and to consider whether to approve the
7 Settlement for these additional Settlement Class Members.

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

11 IT IS HEREBY ORDERED, ADJUDGED and DECREED THAT:

- 12 1. The capitalized terms used in this Order and Judgment shall have the same
13 meaning as defined in the Settlement Agreement except as may otherwise be ordered.
- 14 2. The Court has jurisdiction over the subject matter of this Action and over all
15 claims raised therein and all Parties thereto, including the Settlement Class.
- 16 3. For purposes of this Order and Judgment, the Settlement Class Members
17 bound by this Order and Judgment shall consist of any present and/or former customer of Verizon
18 Wireless who activated Verizon Wireless Cellular Service for a Motorola V710 cellular telephone
19 on or before January 31, 2005, excluding Defendants, and entities in which Defendants have a
20 controlling interest, any employees, officers, directors of Defendants, and any legal
21 representatives, assigns, successors of Defendants, and any Judge assigned to hear this case, and
22 to whom the Notice and Claim Form packets were mailed by the Settlement Administrator on or
23 before October 9, 2005, and who did not submit a timely and valid Request for Exclusion, or who
24 submitted a Claim Form with the Settlement Administrator on or before December 9, 2005 (the
25 "Initial Settlement Class Members"). A list of all Initial Settlement Class Members who
26 submitted a timely and valid Request for Exclusion shall be filed by the Settlement Administrator
27 Poorman-Douglas Corporation, under seal.

1 4. The Court finds that the Notice Plan set forth in Article IV of the Settlement
2 Agreement and effectuated pursuant to the Preliminary Approval Order constitutes the best notice
3 practicable under the circumstances and constituted due and sufficient notice to the Initial
4 Settlement Class Members of the pendency of the Action, certification of the Class for settlement
5 purposes only, the terms of the Settlement Agreement, and the Final Approval Hearing, and
6 satisfies the requirements of California law and federal due process of law.

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

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

17 7. Upon the Effective Date, the Class Representatives and all Initial Settlement
18 Class Members shall have, by operation of this Order and Judgment, fully, finally and forever
19 released, relinquished, and discharged all Released Parties from all Released Claims, whether or
20 not such Initial Settlement Class Members execute and deliver a Claim Form.

21 8. Initial Settlement Class Members, including the Class Representatives, and
22 the successors, assigns, parents, subsidiaries, affiliates or agents of any of them, are hereby
23 permanently barred and enjoined from instituting, commencing or prosecuting, either directly or
24 in any other capacity, any Released Claim against any of the Released Parties.

25 9. This Order and Judgment, the Settlement Agreement, the Settlement which it
26 reflects, and any and all acts, statements, documents or proceedings relating to the Settlement are
27 not, and shall not be construed as, or used as an admission by or against Defendants or any other
28

1 Released Party of any fault, wrongdoing, or liability on their part, or of the validity of any
2 Released Claim or of the existence or amount of damages.

3 10. The Court will hear argument on the Motion For An Award Of Fees And
4 Costs, on March 16, 2006. The Court will enter a separate Order awarding reasonable attorneys'
5 fees and expenses, in an amount to be set forth in that separate order.

6 11. The Court approves the payments of \$500 to each of the Class
7 Representatives as incentive awards.

8 12. The payments described in paragraph 11 shall be made in the manner and at
9 the times set forth in the Settlement Agreement.

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

18 **IT IS SO ORDERED.**

19
20 Dated: January 18, 2006



21 _____
22 Honorable Robert Hess
23 Judge of the Los Angeles County Superior Court

23 **APPROVED AS TO FORM**

24 Kirtland & Packard LLP

25
26 BY _____
27 Michael L. Kelly

27 Attorney for Plaintiffs

28

1 Released Party of any fault, wrongdoing, or liability on their part, or of the validity of any
2 Released Claim or of the existence or amount of damages.

3 10. The Court will hear argument on the Motion For An Award Of Fees And
4 Costs, on March 16, 2006. The Court will enter a separate Order awarding reasonable attorneys'
5 fees and expenses, in an amount to be set forth in that separate order.

6 11. The Court approves the payments of \$500 to each of the Class
7 Representatives as incentive awards.

8 12. The payments described in paragraph 11 shall be made in the manner and at
9 the times set forth in the Settlement Agreement.

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

18 **IT IS SO ORDERED.**

19
20 Dated: January __, 2006

21 _____
22 Honorable Robert Hess
23 Judge of the Los Angeles County Superior Court

23 **APPROVED AS TO FORM**

24 Kirtland & Packard LLP

25 BY 

26 Michael L. Kelly

27 Attorney for Plaintiffs

28

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 **January 18, 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 **January 18, 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 michaellkelly@earthlink.net</p>	<p>Kevin Yourman, Esq. Behram V. Parekh, Esq. Yourman Alexander & Parekh LLP 3601 Aviation Boulevard, Suite 3000 Manhattan Beach, CA 90266</p>
<p>John R. Climaco, Esq. Climaco Lefkowitz Peca Wilcox & Garofoli Co., LPA 1228 Euclid Avenue, Suite 900 Cleveland, OH 44115 jrclim@vzw.blackberry.net</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 ww Weinstein@whesq.com</p>	