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Message Services

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

10
11 GRANT R. OPPERMAN, et al, as
individuals, and on behalf of all others
12 similarly situated and the general public,

13 Plaintiffs,

14 vs.

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

18 Defendants.
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CASE NO. BC 326764

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

STIPULATION OF SETTLEMENT

1 It is hereby stipulated by and among the undersigned Parties, subject to the
2 approval of the Court pursuant to Rule 1859 of the *California Rules of Court*, that the settlement
3 of this Action shall be effectuated pursuant to the terms and conditions set forth in this Settlement
4 Agreement.

5 ARTICLE I.

6 PREAMBLE

7 (a) WHEREAS, Defendant Cellco Partnership, doing business as Verizon Wireless
8 (“Verizon Wireless”), is a partnership organized under the laws of the State of Delaware with its
9 principal place of business in New Jersey, Defendant Verizon Wireless Messaging Services is a
10 corporation organized under the laws of Texas, and Defendant Verizon Wireless Services, LLC,
11 is a limited liability company organized under the laws of Delaware.

12 (b) WHEREAS, beginning in or about August 2004, Verizon Wireless offered for sale
13 the Motorola V710 wireless cellular telephone handset manufactured by Motorola Corporation
14 (the “Motorola V710 telephone”) throughout the United States.

15 (c) WHEREAS, Verizon Wireless’ marketing materials represented that the Motorola
16 V710 telephone offered Bluetooth@technology that could be used with Verizon Wireless’ cellular
17 telephone services.

18 (d) WHEREAS, certain of the Plaintiffs are the named plaintiffs in the Amended
19 Complaint filed on January 20, 2005, in the above-captioned action entitled *Grant R. Opperman,*
20 *et al. v. Cellco Partnership, et al.*, Los Angeles Superior Court Case No. 237806 (the “Action”),
21 in which they seek to represent an alleged class of all persons who activated Verizon Wireless
22 cellular services for a Motorola V710 telephone in California.

23 (e) WHEREAS, certain of the Plaintiffs are the named plaintiffs in the action filed on
24 January 7, 2005, entitled *Howard M. Zhao v. Verizon Wireless, Inc.*, No. 05 551545, pending in
25 the Court of Common Pleas, Cuyahoga County, Ohio (the “Zhao Action”) and others are the
26 named plaintiffs in the arbitration filed on January 20, 2005, in the matter entitled in *Joshua A.*
27 *Kaner, et al., v. Cellco Partnership doing business as Verizon Wireless*, No. 11 494 00161 05,
28 pending before the American Arbitration Association in New York, New York (the “Kaner

1 Arbitration”), in which they seek to represent an alleged class of all persons who activated
2 Verizon Wireless cellular services for a Motorola V710 telephone in the United States.

3 (f) WHEREAS, Plaintiffs assert various claims concerning Verizon Wireless’s
4 disclosures regarding what Bluetooth® technology features were available for customers who
5 activated Verizon Wireless cellular services for the Motorola V710 phone.

6 (g) WHEREAS, Verizon Wireless denies all the allegations of the Amended
7 Complaint, the Zhao Action, and the Kaner Arbitration, and all allegations of wrongdoing and
8 liability.

9 (h) WHEREAS, Plaintiffs and their counsel have concluded, in light of the costs,
10 risks, and delay of litigation, particularly in this complex putative class action, that this Settlement
11 is fair, reasonable, adequate, and in the best interests of Plaintiffs and the Settlement Class.

12 (i) WHEREAS, Verizon Wireless has concluded, in light of the costs and delay of
13 litigation, that settlement of this Action is appropriate on the terms and conditions set forth herein.

14 NOW THEREFORE, it is hereby stipulated and agreed that, in consideration of
15 the agreements, promises, and covenants set forth in this Stipulation Of Settlement, and subject to
16 approval of the Court, this Action shall be fully and finally settled and dismissed with prejudice
17 and without costs under the following terms and conditions:

18 ARTICLE II.

19 DEFINITIONS

20 As used in this Agreement and the related documents attached hereto as exhibits,
21 the following terms shall have the meanings set forth below:

22 (a) “Accessories” means cellular telephone accessories marketed and sold by Verizon
23 Wireless that (i) are compatible only with the Motorola V710 telephone; (ii) listed on Exhibit X
24 to this Agreement, and (iii) are returned to the Settlement Administrator along with a Motorola
25 V710 telephone in accordance with Article V(e)(6) and (7).

26 (b) “Action” means the civil action entitled *Grant R. Opperman, et al. v. Cellco*
27 *Partnership doing business as Verizon Wireless, et al.*, Los Angeles Superior Court Case No. BC
28 326764.

1 (c) "Approved Claim" means a Claim Form determined by the Settlement
2 Administrator to be valid in accordance with Article II(d) or as resolved in favor of a claimant
3 pursuant to Article V.

4 (d) "Claim Form" means the claim form substantially in the form of Exhibit D to this
5 Settlement Agreement. To be valid, a Claim Form must: (1) be fully completed; (2) be certified
6 under penalty of perjury by the Settlement Class Member; and (3) be timely mailed to the
7 Settlement Administrator. The Certification Under Penalty of Perjury shall be signed by the
8 Settlement Class Member and certify that he or she is the person to whom the Notice was
9 addressed; and that he or she (1) activated Verizon Wireless Service for a Motorola V710
10 telephone on or before January 31, 2005; (2) purchased a Motorola V710 telephone because he or
11 she believed it would support the object exchange or file transfer features; and (3) owns another
12 Bluetooth® enabled device that supports either the object exchange or file transfer features or had
13 intended to purchase such a device.

14 (e) "Class Counsel" means the law firms Kirtland & Packard LLP; Yourman,
15 Alexander & Parekh LLP, Climaco, Lefkowitz, Peca, Wilcox & Garofoli Co., L.P.A.; David P.
16 Meyer & Associates Co., LPA and Wechsler Harwood LLP..

17 (f) "Class Representatives" or "Plaintiffs" means Grant R. Opperman, Timothy A.
18 Davis, Amy Blumenfield, Alan C. Ivar, Michael Nunberg, Howard M. Zhao, Joshua A. Kaner,
19 John Christian Vinci, and Sunil Kamath.

20 (g) "Court" means the Superior Court of the State of California for the County of Los
21 Angeles.

22 (h) "Credit" means a bill credit towards any cellular telephone service or product
23 offered by Verizon Wireless.

24 (i) "Claiming Current Customer(s)" means a Settlement Class Member who (i) is a
25 Customer (as defined in Article II(k) of this Agreement) and (ii) has not cancelled his or her
26 Verizon Wireless Cellular Service prior to the date upon which he or she submits a Claim Form to
27 the Settlement Administrator.

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1 (j) "Claiming Former Customer(s)" means a Settlement Class Member who (i) is a
2 Customer (as defined in Article II(k) of this Agreement and (ii) cancels or has cancelled his or
3 her Verizon Wireless Cellular Service prior to the date upon which he or she submits a Claim
4 Form to the Settlement Administrator.

5 (k) "Customer" means a person who, as indicated by Verizon Wireless' records, or by
6 customer records to the satisfaction of the Settlement Administrator, activated Verizon Wireless
7 Cellular Service for a Motorola V710 telephone on or before January 31, 2005.

8 (l) "Defendants" means Cellco Partnership, doing business as Verizon Wireless,
9 Verizon Wireless Messaging Services, and Verizon Wireless Services LLC.

10 (m) "Defendants' Counsel" means Munger, Tolles & Olson LLP.

11 (n) "Effective Date" means the first day by which all of the following events shall
12 have occurred: (1) the Court has entered the Preliminary Approval Order as set forth in Article
13 VIII(b) of this Agreement; (2) the Court has entered the Order and Judgment as set forth in
14 Article VIII(d) of this Agreement; (3) the Order and Judgment has become Final as defined in
15 Article II(p) of this Agreement; and (4) Dismissals of the Related Litigation have become Final as
16 defined in Article II(p) of this Agreement.

17 (o) "Fee and Expense Application" means that written motion or application by which
18 Class Counsel requests that the Court award them fees and/or expenses.

19 (p) "Final" with respect to the Order and Judgment (as defined in Article II(s) of this
20 Agreement) means the Order and Judgment as entered on the docket by the Court in this Action,
21 which has not been reversed, stayed, modified, or amended, and as to which (1) the time to appeal
22 under the *California Rules of Court* has expired and no appeal or further appeal has been timely
23 filed, or (2) any appeal has been resolved by the highest court to which it was appealed upholding
24 or affirming the Order and Judgment.. An appeal pertaining solely to an application for or award
25 of attorneys' fees, costs, and expenses shall not in any way delay or preclude the Order and
26 Judgment from being Final. "Final" with respect to the Related Litigation means that the time to
27 appeal dismissal of the Zhao Action has expired or the dismissal has been upheld or affirmed by
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1 the highest appellate court in Ohio to which the dismissal was appealed and the American
2 Arbitration Association has confirmed that it has closed the Kaner Action.

3 (q) "Final Approval Hearing" means the hearing at which the Court shall:

4 (1) determine whether to grant final approval to this Settlement Agreement; (2) consider any
5 timely objections to this Settlement and all responses to objections by the Parties; and (3) rule on
6 the Fee and Expense Application.

7 (r) "Notice" means the notice of class action settlement attached hereto as Exhibit C.

8 (s) "Order and Judgment" means the order, substantially in the form attached hereto
9 as Exhibit B, in which the Court grants final approval of this Settlement Agreement and
10 authorizes the entry of a Final judgment and dismissal of the Action.

11 (t) "Parties" means Verizon Wireless and Plaintiffs in their capacities as Class
12 Representatives.

13 (u) "Person" or "Persons" means any natural person, firm, corporation, unincorporated
14 association, partnership or other form of legal entity or government body, including its agents and
15 representatives.

16 (v) "Preliminary Approval Order" means the order, substantially in the form of
17 Exhibit A hereto, in which the Court grants its preliminary approval to this Settlement
18 Agreement, approves Plaintiffs as Class Representatives, preliminarily approves certification of
19 the Settlement Class for settlement purposes only, authorizes dissemination of Notice to the
20 Settlement Class, and enjoins and members of the Settlement Class from filing any other actions
21 based upon any of the Released Claims as defined in Article II(z).

22 (w) "Refund" means (i) the actual amount paid by a Customer for a Motorola V710
23 telephone and/or Accessories on presentation of proof of the amount paid for the telephone and/or
24 Accessories or (ii) \$200 if the Customer does not have proof of the amounts paid for the
25 telephone and/or Accessories.

26 (x) "Refund Credit" means a Credit that may be used towards the purchase of a
27 Verizon Wireless telephone and accessories on the same terms and conditions available to new
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1 Verizon Wireless customers in the amount of (i) the actual amount paid by a Customer for a
2 Motorola V710 telephone and Accessories on presentation of proof of the amount paid for the
3 telephone and/or Accessories or (ii) \$200 if the Customer does not have proof of the amounts
4 paid for the telephone and/or Accessories.

5 (y) "Related Litigation" means the action entitled *Howard M. Zhao v. Verizon*
6 *Wireless, Inc.*, pending in Cuyahoga County, Ohio (the "Zhao Action") and the arbitration
7 entitled in *Joshua A. Kaner, et al., v. Cellco Partnership doing business as Verizon Wireless*
8 pending before the American Arbitration Association in New York, New York (the "Kaner
9 Arbitration").

10 (z) "Released Claims" means any and all actions, causes of action, claims, demands,
11 liabilities, obligations, fees, costs, sanctions, proceedings and/or rights of any nature and
12 description whatsoever, including violations of any state or federal statutes, rules or regulations,
13 or principles of common law, whether liquidated or unliquidated, known or unknown, in law or in
14 equity, whether or not concealed or hidden, that have been asserted in this Action or the Related
15 Litigation or that might have been asserted in this Action or the Related Litigation by Plaintiffs on
16 behalf of themselves or the Settlement Class concerning, regarding, arising out of, or in any way
17 relating to the Bluetooth® features or Bluetooth® functionality of the Motorola V710 telephone.

18 (aa) "Released Parties" means (1) Verizon Wireless, Verizon Wireless Messaging
19 Services, and Verizon Wireless Services LLC; (2) their present and former subsidiaries, parents,
20 partners, affiliates, successors, and predecessors, (3) all Persons on whose behalf any of the
21 foregoing entities acted or purported to act, (4) any agent, retailer, or business authorized by
22 Verizon Wireless to provide or activate Verizon Wireless Cellular Service, and (5) for each of the
23 foregoing Persons and entities, each of their present, former, or future officers, directors,
24 shareholders, employees, representatives, agents, principals, consultants, contractors, insurers,
25 accountants, attorneys, partners, members, administrators, legatees, executors, heirs, estates,
26 successors in interest or assigns or any other Person with whom any of them is affiliated or
27 otherwise for whom any of them is responsible at law or in equity.

28 (bb) "Releasing Parties" means Plaintiffs and each Settlement Class Member.

1 (cc) "Request for Exclusion" means a request for exclusion from the Settlement Class
2 submitted by a Customer, pursuant to the instructions set forth in the Notice, to the Settlement
3 Administrator no later than sixty (60) days after the date of the Notice. To be valid, a Request for
4 Exclusion must: (1) be signed by the Customer or his or her authorized representative; (2) be
5 timely mailed to the Settlement Administrator; (3) clearly request exclusion from the Settlement
6 Class; and (4) contain the Customer's name, address, and telephone number.

7 (dd) "Settlement Administrator" means Poorman-Douglas Corporation. The Parties
8 shall request that the Court approve the selection of Poorman-Douglas Corporation in the
9 Preliminary Approval Order to perform the functions assigned to the Settlement Administrator by
10 this Settlement Agreement.

11 (ee) "Settlement Agreement," "Settlement," or "Agreement" means this Stipulation Of
12 Settlement, including the attached Exhibits.

13 (ff) "Settlement Class" means the class certified for settlement purposes only,
14 consisting of Customers who activated Verizon Wireless Cellular Service for a Motorola V710
15 telephone on or before January 31, 2005.

16 (gg) "Settlement Class Member" means any Customer who does not submit a timely
17 and valid Request for Exclusion.

18 (hh) "Verizon Wireless" means Celco Partnership doing business as Verizon Wireless,
19 and its authorized agents.

20 (ii) "Verizon Wireless Cellular Service" means cellular telephone service offered by
21 Verizon Wireless for the Motorola V710 cellular telephone.

22 ARTICLE III.

23 SETTLEMENT CLASS RELIEF

24 In consideration of a full, complete, and final settlement of this Action, and in
25 consideration of dismissal of the Action with prejudice, the Dismissals and Release in Article
26 VIII below, and subject to the Court's approval, the Parties agree to the following:

27 (a) Subject to Article III(c) below, Claiming Current Customers who submit an
28 Approved Claim will be entitled at their election to

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- (1) Continue their Verizon Wireless Cellular Service and receive a Credit in the amount of twenty-five dollars (\$25); or
 - (2) continue their Verizon Wireless Cellular Service, purchase a new Verizon Wireless telephone, and return their Motorola V710 telephone and any Accessories to the Settlement Administrator for a Refund Credit; or
 - (3) cancel their Verizon Wireless Cellular Service without a cancellation fee and return their Motorola V710 telephone and any Accessories to the Settlement Administrator by prepaid mailer for a Refund.
- (b) Subject to Article III(c) below, Claiming Former Customers who submit an Approved Claim will be entitled to
- (1) An amount equal to any cancellation fees they paid to cancel their Verizon Wireless Cellular Service and
 - (2) Return their Motorola V710 telephone and any Accessories to the Settlement Administrator by prepaid mailer for a Refund.
- (c) Any Credit or Refund Credit for, or Refund payable to, a Claiming Current Customer, and any Refund payable to a Claiming Former Customer pursuant to this Settlement Agreement shall be subject to offsets for any Credit or monies received from Verizon Wireless in connection with Verizon Wireless Cellular Service, which, in the event of a dispute, shall be determined by the Settlement Administrator from Verizon Wireless' records and any additional materials submitted by the Customer.
- (d) To the extent that it has not already done so, no later than the date of the Final Approval Hearing, Verizon Wireless will revise its advertising and marketing disclosures to reflect the Bluetooth® technology available on the Motorola V710 telephone marketed or sold by Verizon Wireless.
- (e) Plaintiffs recognize Verizon Wireless' absolute right to determine which functions and content will be included, or not included, in the Motorola V710 telephone offered for sale or marketed by Verizon Wireless at any time now or in the future.

1 ARTICLE IV.

2 NOTICE OF CLASS ACTION SETTLEMENT

3 Notice of the Settlement shall be provided by first-class United States mail or
4 electronically to Customers as follows:

5 (a) Customer List. Prior to sending the Notice, Verizon Wireless shall identify each
6 Customer to the extent practicable from Verizon Wireless' records and provide a list of the
7 Customers to the Settlement Administrator and to Class Counsel.

8 (b) Notice. As soon as practicable after the entry of the Preliminary Approval Order,
9 and in accordance with the timetable established under the Preliminary Approval Order, Verizon
10 Wireless shall send the Notice together with a Claim Form in an envelope with a return address of
11 "Verizon Wireless Motorola Bluetooth® Settlement Administrator" (i) to the billing address of
12 every Customer who is currently a Customer of Verizon Wireless by first class United States
13 mail, postage prepaid and (ii) to the last know address of every Customer who was formerly a
14 Customer of Verizon Wireless by first class United States mail, postage prepaid. The Claim
15 Form shall be returnable to the Settlement Administrator.

16 (c) Website. Promptly after entry of the Preliminary Approval Order, and in
17 accordance with the timetable established under the Preliminary Approval Order, the Settlement
18 Administrator shall establish a web site from which Customers may obtain information about this
19 Settlement Agreement and copies of the Notice and Claim Form. The Parties will cooperate and
20 agree on the content and address of the web site. The Court shall resolve any disputes between
21 the Parties over the content and address of the web site.

22 (d) Declarations of Compliance. No later than twenty-one (21) days before the date
23 fixed by this Court for the Final Approval Hearing, Verizon Wireless shall provide Class
24 Counsel, and file with the Court, a declaration attesting to compliance with the notice
25 requirements set forth above.

26 (e) Best Notice Practicable. Compliance with the procedures described in this Article
27 is the best notice practicable under the circumstances and shall constitute due and sufficient
28 notice to Class Members of the pendency of the Action, certification of the Settlement Class, the

1 terms of the Settlement Agreement, and the Final Approval Hearing, and shall satisfy the
2 requirements of the California Rules of Court, the California Code of Civil Procedure, the
3 Constitution of the State of California, the United States Constitution, and any other applicable
4 law.

5 ARTICLE V.

6 DISTRIBUTION OF SETTLEMENT CLASS RELIEF AND DUTIES OF SETTLEMENT

7 ADMINISTRATOR

8 (a) Settlement Administrator. The Parties, Class Counsel, and Defendants' Counsel
9 will cooperate to ensure that the Settlement Administrator shall perform all duties required of it
10 pursuant to this Settlement Agreement, including, but not limited to, approving or rejecting Claim
11 Forms; determining which Customers have filed a valid and timely Request for Exclusion;
12 calculating amounts to be paid for Approved Claims based on data and payment information
13 provided by Verizon Wireless and Customers, and mailing checks, all as described below.
14 Additionally, the Settlement Administrator will be obligated to bring to the Court's attention for
15 resolution any disputes which arise in the course of the settlement administration process and
16 cannot be resolved by agreement between the Settlement Administrator, Class Counsel and
17 Defendants' Counsel.

18 (b) Report on Requests for Exclusion. Within twenty (20) days of the last postmark
19 date on which a Customer shall be permitted to submit a Request for Exclusion, the Settlement
20 Administrator shall prepare and file under seal with the Court, and serve on Class Counsel and
21 Defendants' Counsel, a report identifying each Customer who has submitted a timely and valid
22 Request for Exclusion from the Settlement Class. Such Customers will not be entitled to receive
23 any Settlement Class Relief, and neither Verizon Wireless nor the Administrator shall distribute
24 any Settlement Class Relief to any such Customer.

25 (c) Report on Settlement Class Members Ineligible To Receive Settlement Class
26 Relief. Within thirty (30) days of the last postmark date on which a Settlement Class Member
27 shall be permitted to submit a Claim Form or to resubmit a Claim Form as described herein, the
28 Settlement Administrator shall prepare and deliver to Class Counsel and Defendants' Counsel a

1 report identifying those Settlement Class Members who are deemed by the Settlement
2 Administrator ineligible to receive Settlement Class Relief on account of any deficiency in their
3 Claim Form.

4 (d) Other Inquiries By Counsel. Nothing in this Agreement shall preclude Class
5 Counsel or Defendants' Counsel from making reasonable inquiries of the Settlement
6 Administrator, from time to time, regarding the progress of the administration of this Settlement,
7 and the Settlement Administrator shall respond to such reasonable inquiries as it sees fit in
8 accordance with its business discretion and its custom and practice. The Settlement
9 Administrator shall provide weekly reports to Defendants' Counsel and Class Counsel with the
10 pertinent claim statistics.

11 (e) Settlement Class Relief to Claiming Current Customers and Claiming Former
12 Customers.

13 (1) Claim Form. In order to receive a Credit, Refund Credit or Refund
14 pursuant to Article III of this Agreement, each Claiming Current Customer
15 and Claiming Former Customer will be required to complete and return a
16 Claim Form to the Settlement Administrator. The postmark deadline for
17 submitting the Claim Form will be sixty (60) days from the date of the
18 mailing of the Claim Form.

19 (2) Approval and Rejection of Claim Forms. The Settlement Administrator
20 shall determine whether a Claim Form is valid as set forth in Article II(d)
21 based upon the responses provided to the questions set forth on the Claim
22 Form and the postmarked date that the Claim Form is submitted. If the
23 Settlement Administrator rejects a Claim Form or reduces the amount
24 claimed for any reason, the Settlement Administrator shall as soon as
25 practicable notify the Person submitting the Claim Form or reduction of the
26 rejection and the reasons for rejection or reduction in writing, as well as the
27 procedure for challenging the rejection or reduction.
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1 (3) Procedures for Challenging Approval or Rejection of Claim Forms. The
2 Parties through their counsel shall have the right to challenge the
3 Settlement Administrator's approval or disapproval of any Claim Form or
4 the amount of any Approved Claim. If any of the Parties through their
5 counsel makes such a challenge, the Settlement Administrator shall have
6 the obligation to meet and confer with Class Counsel and Defendants'
7 Counsel in an attempt consensually to resolve the challenge. Failing such
8 consensual resolution, a Party through counsel may present its challenge to
9 the Court. A person who was notified by the Settlement Administrator that
10 his or her Claim Form was rejected or reduced pursuant to the preceding
11 paragraph shall have an independent right to challenge the rejection or
12 reduction. Such person shall be permitted a period of thirty (30) days from
13 the date of the mailing of the notice of rejection in which either to (a)
14 resubmit the Claim Form to the Settlement Administrator with any missing
15 information necessary for the Claim Form or amount to be approved, or (b)
16 notify the Settlement Administrator of his or her challenge to the rejection
17 or reduction. Upon such notification, the Settlement Administrator
18 promptly shall notify Class Counsel and Defendants' Counsel, who then
19 shall have the obligation to meet and confer with one another and with the
20 Settlement Administrator in an attempt consensually to resolve the
21 challenge. Failing consensual resolution, the Settlement Administrator
22 shall notify the challenging person that he or she may, within ten (10) days
23 of mailing of such notice, present the challenge to the Court.

24 (4) Notification of Approved Claims. Within thirty (30) days of the resolution
25 of all challenges to approved or rejected Claim Forms, the Settlement
26 Administrator shall notify Verizon Wireless, Defendants' Counsel and
27 Class Counsel of (i) each Claiming Current Customer who has submitted
28 an Approved Claim and the nature of Settlement Class Relief sought (*e.g.*,

1 Credit, Refund Credit, and Refund) and (ii) each Claiming Former
2 Customer who has submitted an Approved Claim

3 (5) Payment and Processing of Approved Claims. Within thirty (30) days of
4 the later of (i) the date upon which the Order and Judgment becomes Final
5 or (ii) Verizon Wireless' receipt of the notification provided in Article
6 V(e)(4), and subject to the offset provided in Article III(c), Verizon will (i)
7 provide each Claiming Current Customer who elects to continue his or her
8 Verizon Wireless Cellular Service pursuant to Article III(a)(1) with a \$25
9 Credit; and (ii) send to each Claiming Former Customer a check in the
10 amount of the cancellation fee paid by the Claiming Former Customer.

11 (6) Exchange of Telephones. Within thirty (30) days of the later of (i) the date
12 upon which the Order and Judgment becomes Final or (ii) Verizon
13 Wireless' receipt of the notification provided in Article V(e)(4), Verizon
14 Wireless will send pre-paid mailers to Claiming Current Customers who
15 elect to exchange their Motorola V710 telephones and Accessories
16 pursuant to Article III(a)(2) with instructions to purchase any telephone
17 offered by Verizon Wireless other than a Motorola V710 telephone from a
18 Verizon Wireless website to be established and then return their Motorola
19 V710 telephones and Accessories to the Settlement Administrator within
20 sixty (60) days along with their proof, if any, of the amounts they paid for
21 the Motorola V710 telephone and Accessories for a Refund Credit .

22 (7) Return of Telephones. Within thirty (30) days of the later of (i) the date
23 upon which the Order and Judgment becomes Final or (ii) Verizon
24 Wireless' receipt of the notification provided in Article V(e)(4), Verizon
25 Wireless will (a) send pre-paid mailers to Claiming Current Customer who
26 elect to return to their Motorola V710 telephones and Accessories pursuant
27 to Article III(a)(3) with instructions to return their Motorola V710
28 telephones and Accessories to the Settlement Administrator within sixty

1 (60) days along with their proof, if any, of the amounts they paid for the
2 telephone and Accessories for a Refund, and notifying them that their
3 service will be cancelled without requiring payment of a cancellation fee
4 within three (3) days of the Settlement Administrator's receipt of the
5 Claiming Current Customer's Motorola V710 telephone; and (b) send pre-
6 paid mailers to Claiming Former Customers with instructions to return
7 their Motorola V710 telephones and Accessories to the Settlement
8 Administrator within sixty (60) days along with their proof, if any, of the
9 amounts they paid for the telephones and Accessories for a Refund.

10 (8) Processing and Payment of Refunds and Refund Credits. Within forty-five
11 (45) days of the last postmark date upon which a Claiming Current
12 Customer or Claiming Former Customer may return his or her Motorola
13 V710 telephone and Accessories, the Settlement Administrator shall notify
14 Verizon Wireless of the amount of the Refund or Refund Credit owed to
15 each Claiming Current Customer and Claiming Former Customer who
16 timely returned his or her Motorola V710 telephone and Accessories. The
17 Settlement Administrator's determination of the amount of the Refund or
18 Refund Credit shall be final and not subject to challenge by Verizon
19 Wireless or any Claiming Current Customer or Claiming Former
20 Customer, unless the Claiming Current Customer or Claiming Former
21 Customer has complied with the procedures for challenging the Settlement
22 Administrator's determination in Article V(e)(3). Within thirty (30) days of
23 the later of (i) the date upon which the Order and Judgment becomes Final
24 or (ii) Verizon Wireless' receipt of the notification provided in this Article
25 V(f)(6), Verizon Wireless shall as directed by the Settlement Administrator
26 either send a check for a Refund to each Claiming Current Customer or
27 Claiming Former Customer who timely returned his or her Motorola V710
28 telephone and Accessories or provide a Refund Credit to each Claiming

1 Current Customer who timely exchanged his or her Motorola V710. The
2 Refund Credit shall be applied to each such Claiming Current Customer's
3 next bill and each succeeding bill until the Refund Credit has been used up.
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5 ARTICLE VI.

6 PAYMENT OF ATTORNEYS' FEES AND EXPENSES AND SETTLEMENT COSTS

7 Attorneys' fees and expenses and settlement costs shall be paid as follows:

8 (a) Costs of Notice. Verizon Wireless shall bear all reasonable costs of providing
9 notice of the proposed settlement to the Settlement Class as provided herein, including costs of
10 identifying members of the Settlement Class, costs of printing the Notice, and costs of mailing the
11 Notice, and shall be responsible for printing the Notice, Claim Forms, and other necessary
12 documents;. If, for any reason, the Effective Date does not occur, then the costs of providing
13 notice to the Settlement Class that are incurred by Verizon Wireless shall nevertheless be borne
14 by Verizon Wireless.

15 (b) Costs of Administering Settlement. Verizon Wireless shall bear all reasonable
16 costs of administering the Settlement and the cost of printing and mailing any checks to be issued
17 as part of the Settlement. If, for any reason, the Effective Date does not occur, then the costs of
18 administering the Settlement which are incurred by Verizon Wireless shall nevertheless be borne
19 by Verizon Wireless.

20 (c) Fees of Settlement Administrator. The reasonable fees of the Settlement
21 Administrator which are incurred in connection with the Settlement Notice and the administration
22 of the Settlement shall be borne by Verizon Wireless. If, for any reason, the Effective Date does
23 not occur, then the costs of administering the Settlement which are incurred by Verizon Wireless
24 shall nevertheless be borne by Verizon Wireless.

25 (d) Attorneys' Fees, Expenses, and Incentive Awards. The Parties have participated
26 in a non-binding mediation in an attempt to agree upon a Fee and Expense Application for
27 Plaintiffs' attorneys fees and expenses that Verizon Wireless will not oppose. In the event that
28 the Parties are unable to agree upon a mediator, they agree that the Court may appoint the

1 mediator. Following the mediation, Plaintiffs will make a Fee and Expense Application to be
2 heard in connection with the Final Approval Hearing. Unless the Parties agree on a Fee and
3 Expense Application as a result of the mediation or some other process, Defendants shall have the
4 right to oppose the Fee and Expense Application in whole or in part, and the Parties shall have the
5 right to appeal any award of attorneys' fees and expenses granted by the Court. Any attorneys'
6 fees or expenses granted by the Court shall be paid by Verizon Wireless within thirty (30) days of
7 the later of the date on which the Order and Judgment and dismissal of the Related Actions are all
8 Final or the resolution of any appeal of any grant of attorney fees and expenses by the Court.
9 Subject to the approval of the Court, Verizon Wireless shall pay each of the Class Representatives
10 an incentive award of \$500 by separate checks within thirty (30) days of the Effective Date of this
11 Agreement.

12 (e) Severability of Attorneys Fees and Expenses. The Parties agree that the rulings of
13 the Court regarding the amount of attorneys' fees and expenses, and any claim or dispute relating
14 thereto, will be considered by the Court separately from the remaining matters to be considered at
15 the Final Approval Hearing as provided for in this Settlement Agreement. Any order or
16 proceedings relating to the amount of attorneys' fees or expenses, or incentive awards, and any
17 appeal from any order related thereto, shall not operate to terminate or cancel the Settlement
18 Agreement, affect the Releases provided for in the Settlement Agreement, or affect whether the
19 Final Approval Order and Judgment are Final, as defined in Article II of this Agreement.

20 ARTICLE VII.

21 RELEASES AND DISMISSALS

22 In order to effectuate the Parties' desire to fully, finally and forever settle,
23 compromise, and discharge all disputes arising from or related to the Action by way of
24 compromise rather than by way of further litigation, the Releasing Parties and the Released
25 Parties agree as follows:

26 (a) Dismissals. Within ten (10) days after execution of this Agreement by all Parties,
27 Defendants' Counsel, and Class Counsel, Class Counsel shall seek dismissals without prejudice
28 of Defendants Verizon Messaging Services and Verizon Services LLC and the Related Litigation

1 by filing the appropriate motions to dismiss in this Action and in the *Zhao* Action and requesting
2 the American Arbitration Association to dismiss the *Kaner* Arbitration Plaintiffs may not
3 reinstitute the *Zhao* Action and/or the *Kaner* Arbitration unless the Court rejects the Settlement
4 Agreement and declines to enter the Preliminary Approval Order, in which case Verizon Wireless
5 agrees to toll any and all applicable statutes of limitations from the dates the *Zhao* Action and
6 *Kaner* Arbitration are dismissed until 30 days after the Court declines to enter the Preliminary
7 Approval Order. The Parties agree that Verizon Wireless is not waiving its right to seek to
8 compel arbitration in the *Zhao* Action and to object to class-wide arbitration in both the *Zhao*
9 Action and the *Kaner* Arbitration, and that, in the event the *Kaner* Arbitration is reinstated, the
10 arbitration shall be pursuant to the terms and conditions of the Parties' customer agreements in
11 force as of January 20, 2005.

12 (b) Preclusive Effect. On the Effective Date, Plaintiffs and each and every Settlement
13 Class Member shall be bound by this Settlement Agreement and shall have recourse exclusively
14 to the benefits, rights and remedies provided hereunder. No other action, demand, suit or other
15 claim may be pursued against the Released Parties with respect to the Released Claims by the
16 Releasing Parties.

17 (c) Releases. On the Effective Date, the Releasing Parties shall be deemed to have,
18 and by operation of this Agreement shall have, fully, finally and forever released, relinquished
19 and discharged the Released Parties from any and all of the Released Claims.

20 (d) Scope of Releases. On the Effective Date, the Releasing Parties shall be deemed
21 to have, and by operation of this Agreement shall have, with respect to the subject matter of the
22 Released Claims, expressly waived the benefits of any statutory provisions or common law rule
23 that provides, in sum or substance, that a general release does not extend to claims which the
24 party does not know or suspect to exist in its favor at the time of executing the release, which if
25 known by it, would have materially affected its settlement with any other party. In particular, but
26 without limitation, the Releasing Parties waive the provisions of California Civil Code. § 1542 (or
27 any like or similar statute or common law doctrine), and do so understanding the significance of
28 that waiver. Section 1542 provides:

