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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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

Plaintiff,

vs.

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

Defendant.

Case No. 07-1510 MC

CLASS ACTION

STIPULATION OF SETTLEMENT

1 **STIPULATION OF SETTLEMENT**

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

11 **RECITALS**

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

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

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

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

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

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

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

12 **AGREEMENT**

13 1. Definitions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 2. Changes in Business Practices; Confirmatory Discovery

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

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

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

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

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

11 3. Settlement Consideration

12 3.1 Verizon Wireless will provide one million dollars (\$1,000,0000) to the Settlement
13 Class as further described below.

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

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

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

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

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

21 4. Releases

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

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

28 5. Settlement Administration

1 5.1 Verizon Wireless shall retain a third-party settlement administrator (the
2 “Settlement Administrator”) to administer the class settlement. Verizon Wireless will select the
3 Settlement Administrator with input from Class Counsel.

4 5.2 Within ten (10) business days after the date of the Preliminary Approval Order,
5 Verizon Wireless shall provide the most recent names and addresses of potential Settlement Class
6 Members, as contained in Verizon Wireless’ books and records as of the date of the Preliminary
7 Approval Order, to the Settlement Administrator. Verizon Wireless has represented that there are
8 approximately 100,000 such potential Settlement Class Members.

9 5.3 The Settlement Administrator shall cause a copy of the Notice (substantially in the
10 form of Exhibit A-1 hereto) and a Claim Form (substantially in the form of Exhibit A-2 hereto) to
11 be sent to the addresses provided by Verizon Wireless pursuant to Section 5.2 promptly after
12 receiving such addresses from Verizon Wireless. The Notice shall include the general terms of
13 the Settlement set forth in this Stipulation and the date of the Settlement Hearing as defined
14 below. The notice will be sent to the last known address of all potential Settlement Class
15 Members via first class mail, and shall not contain any other documents, such as billing
16 statements, advertisements, etc. Verizon Wireless will also make a copy of the Notice and Claim
17 Form available on the Legal Notices section of its website.

18 5.4 Settlement Class Members shall have 120 days from mailing of the Notice to
19 submit a valid Claim Form to the Settlement Administrator, either by mail or online via an
20 electronic submission. Claim Forms must be postmarked or received by the Settlement
21 Administrator no later than 120 days after the last date of mailing of the Notice in order to be
22 eligible for payment.

23 5.5 Rejected Claims

24 Verizon Wireless shall have the right to inspect the Claim Forms (including forms
25 submitted electronically) received by the Settlement Administrator. If Verizon Wireless or the
26 Settlement Administrator determines that any Claim Form is not timely or is duplicative of
27 another Claim Form filed, or if Verizon Wireless determines that a claim is otherwise invalid
28 (such as where a person in fact received a full credit or refund for a Disputed Charge), Verizon

1 Wireless or the Settlement Administrator, as the case may be, shall object to the acceptance of the
2 Claim Form and shall provide Lead Class Counsel with a list of Claim Forms as to which
3 objection is made, together with the reason for objecting to the Claim Form, in writing. If Lead
4 Class Counsel dispute the objection to any Claim Form pursuant to this Paragraph, Lead Class
5 Counsel and counsel for Verizon Wireless shall meet and confer regarding any disputed claims
6 and will attempt in good faith to resolve such disputes. In the event the Parties cannot resolve the
7 dispute, the Parties shall request the assistance of the Court.

8 5.6 Verizon Wireless shall be solely responsible for the fees of the Settlement
9 Administrator and the costs of providing notice.

10 5.7 The Parties, the Released Parties, and their respective counsel shall have no
11 responsibility or liability whatsoever for the Settlement Administrator's conduct, omissions, or
12 actions, including but not limited to the giving of notice to the Settlement Class described in
13 Section 5.3.

14 6. Objections and Opt-Outs

15 6.1 Any Settlement Class Member who intends to object to the fairness,
16 reasonableness, or adequacy of the Settlement (hereinafter "Objections") must file with the Court
17 and serve on Lead Class Counsel and counsel for Verizon Wireless a written objection at least
18 thirty (30) days, or such other number of days as the Court shall specify, before the date of the
19 Final Fairness Hearing. Settlement Class Members making Objections must set forth their full
20 name, current address, and telephone number. Objecting Settlement Class Members must further
21 state in writing all Objections and the reasons therefor, and provide copies of any documents
22 relied upon for such objection, and a statement as to whether the Objector intends to appear at the
23 Final Fairness Hearing and whether he or she is represented by separate legal counsel. Class
24 Members who fail to file and serve timely written objections in the manner specified above shall
25 be deemed to have waived any Objections and shall be foreclosed from making any Objection
26 (whether by appeal or otherwise) to the Settlement.

27 6.2 Any potential Settlement Class Member may submit a request for exclusion to
28 seek to be excluded from the Settlement Class within the time and in the manner provided herein

1 and by Court order. Any potential Settlement Class Member so excluded shall not be bound by
2 the terms of this Agreement and shall be deemed to have waived any rights or benefits under this
3 Agreement. Any potential Settlement Class Member who submits a timely request to opt out may
4 not file an Objection to the Settlement.

5 6.3 Any potential Settlement Class Members who elect to exclude themselves or “opt
6 out” of this Settlement Agreement must file a written Request to Opt Out with the Settlement
7 Administrator, received or postmarked at least thirty (30) days prior to the date set for the
8 Settlement Hearing. The Settlement Administrator will record the date of receipt of the Request
9 to Opt Out. The Settlement Administrator will forward copies of Requests to Opt Out to both
10 counsel for Verizon Wireless and Class Counsel on a weekly basis; provided, however, that all
11 Requests to Opt Out shall be forwarded to both counsel for Verizon Wireless and Class Counsel
12 not less than twenty-five days prior to the date set for the Settlement Hearing, and any Requests
13 received less than twenty-five (25) days prior to the date set for the Settlement Hearing shall be
14 forwarded within two (2) business days following receipt. The Settlement Administrator shall
15 retain copies of all written Requests to Opt Out until such time as it has completed its duties and
16 responsibilities under this Agreement. The Request to Opt Out must be signed by the Settlement
17 Class Member, and it must include the Settlement Class Member’s name, address, and telephone
18 number, and must clearly state that the person wishes to be excluded from the Lawsuit and the
19 Settlement.

20 7. Termination of Settlement

21 7.1 Either Party shall have the right to terminate the Settlement and this Stipulation by
22 providing written notice of their election to do so (“Termination Notice”) to the other Party hereto
23 within thirty (30) days of: (i) the Court’s declining to enter the Preliminary Approval Order in
24 any material respect; (ii) the Court’s refusal to approve this Stipulation or any material part of it;
25 (iii) the Court’s declining to enter the Final Judgment and Order of Dismissal With Prejudice in
26 any material respect; (iv) the date upon which the Final Judgment and Order of Dismissal With
27 Prejudice is modified or reversed in any material respect by the Court of Appeals or the Supreme
28

1 Court; or (v) the date upon which an Alternative Judgment (defined in Section 10.1(c) below) is
2 modified or reversed in any material respect by the Court of Appeals or the Supreme Court.

3 7.2 If prior to the Settlement Hearing, any Persons who otherwise would be Settlement
4 Class Members have timely requested exclusion ("Requests for Exclusion") from the Settlement
5 Class in accordance with the provisions of the Preliminary Approval Order and the notice given
6 pursuant thereto, and the number of such Persons exceeds 2% of Settlement Class Members,
7 Verizon Wireless shall have, in its sole and absolute discretion, the option to terminate this
8 Stipulation. Verizon Wireless may terminate the Stipulation by serving written notice of
9 termination on the Court and Class Counsel by hand delivery or first class mail, postmarked on or
10 before five (5) business days after the receipt of written notification from the Settlement
11 Administrator that the number of timely-filed Requests For Exclusion equals or exceeds 2% of
12 the number of Notices mailed to potential Settlement Class Members.

13 8. Preliminary Approval Order

14 8.1 Promptly after the execution of this Stipulation, Class Counsel shall submit this
15 Stipulation together with its Exhibits to the Court and shall apply for preliminary approval of the
16 Settlement set forth in this Stipulation, certification of a class for settlement purposes only, and
17 entry of a Preliminary Approval Order including approval for the mailing of the Notice.

18 8.2 At the time of the submission described in Section 8.1, Class Counsel shall request
19 that, after Notice is given, the Court hold a hearing (the "Settlement Hearing") and approve the
20 Settlement of the Action as set forth herein.

21 8.3 After Notice is given, Class Counsel shall request and obtain from the Court a
22 Final Judgment and Order of Dismissal With Prejudice essentially identical to the form attached
23 to this Agreement as Exhibit C. The Final Judgment and Order of Dismissal With Prejudice will
24 (among other things):

25 (a) find that the Court has personal jurisdiction over all Settlement Class
26 Members and that the Court has subject matter jurisdiction to approve the Settlement Agreement,
27 including all exhibits thereto;

28

1 (b) approve the Settlement Agreement and the proposed settlement as fair,
2 reasonable and adequate as to, and in the best interests of, each of the Parties and the Settlement
3 Class Members; direct the Parties and their counsel to implement and consummate the Settlement
4 Agreement according to its terms and provisions; and declare the Settlement Agreement to be
5 binding on, and have res judicata and preclusive effect in all pending and future lawsuits or other
6 proceedings maintained by or on behalf of, Sims and all other Settlement Class Members, as well
7 as their heirs, executors and administrators, successors and assigns;

8 (c) find that the Notice and the notice methodology implemented pursuant to
9 the Settlement Agreement (i) constitute the best practicable notice, (ii) constitute notice that is
10 reasonably calculated, under the circumstances, to apprise Settlement Class Members of the
11 pendency of the Action, their right to object to or exclude themselves from the proposed
12 settlement and to appear at the fairness hearing, (iii) are reasonable and constitute due, adequate
13 and sufficient notice to all persons entitled to receive notice, and (iii) meet all applicable
14 requirements of California law, the Due Process Clause of the United States Constitution and the
15 Rules of the Court and Rule 23 of the Federal Rules of Civil Procedure;

16 (d) find that Class Counsel and Sims adequately represented the Settlement
17 Class for purposes of entering into and implementing the settlement;

18 (e) dismiss the Action (including all individual claims and Settlement Class
19 claims presented thereby) on the merits and with prejudice, without fees or costs to any party
20 except as provided in the Settlement Agreement;

21 (f) incorporate the Release set forth above in Section 4, make the Release
22 effective as of the date of the Final Judgment and Order of Dismissal With Prejudice, and forever
23 discharge the Released Parties from any claims or liabilities arising from or related to the facts,
24 circumstances, or subject matter of this Action;

25 (g) bar and enjoin all Settlement Class Members from (a) filing, commencing,
26 prosecuting, intervening in, or participating (as class members or otherwise) in, any lawsuit in any
27 jurisdiction based on or relating to the Released Claims, and (b) organizing Settlement Class
28 Members who have not been excluded from the Settlement Class into a separate class for

1 purposes of pursuing as a purported class action any lawsuit (including by seeking to amend a
2 pending complaint to include class allegations, or seeking class certification in a pending action)
3 based on or relating to the claims and causes of action, or the facts and circumstances relating
4 thereto, in this Action;

5 (h) authorize the Parties, without further approval from the Court, to agree to
6 and adopt such amendments, modifications and expansions of the Settlement Agreement and its
7 implementing documents (including all exhibits to this Agreement) as (a) shall be consistent in all
8 material respects with the Final Judgment and Order of Dismissal With Prejudice, or (b) do not
9 limit the rights of Settlement Class Members;

10 (i) without affecting the finality of the Final Judgment and Order of Dismissal
11 With Prejudice for purposes of appeal, retain jurisdiction as to all matters relating to
12 administration, consummation, enforcement and interpretation of the Settlement Agreement and
13 the Final Judgment and Order of Dismissal With Prejudice, and for any other necessary purpose;
14 and

15 (j) incorporate any other provisions, as the Court deems necessary and just.

16 9. Plaintiff's Counsel's Attorneys' Fees and Reimbursement of Expenses; Incentive Award

17 9.1 The Parties shall attempt to agree on an amount for payment of attorneys' fees and
18 expenses, or, failing such agreement, the amount of attorneys' fees and expenses shall be
19 determined by the Honorable William J. Cahill (ret.) in an arbitration to take place in San
20 Francisco, California, which determination shall be binding on both Parties and not appealable.

21 9.2 Plaintiff's Counsel may file a motion (the "Fee and Expense Motion") to the Court
22 for attorneys' fees and reimbursement of actual costs and expenses incurred in connection with
23 prosecuting the Action, to be heard at the Settlement Hearing, in an aggregate amount not to
24 exceed the amount agreed upon by the parties or determined by the parties' agreed arbitration
25 before the Honorable William Cahill (ret). Verizon Wireless will not oppose an award that does
26 not exceed such amount. Plaintiff's Counsel has, in turn, agreed not to seek or accept more than
27 said amount from the Court.
28

1 9.3 Verizon Wireless shall pay the amount of attorneys' fees and expenses awarded by
2 the Court to Class Counsel within thirty (30) days of the Effective Date, unless there is an appeal
3 concerning the award of attorneys' fees and expenses, in which case the payment shall be made
4 after all appeals concerning that award have concluded and are final.

5 9.4 The Released Parties shall have no responsibility for, and no liability whatsoever
6 with respect to, the allocation among Class Counsel and/or any other Person who may assert
7 some claim thereto, of any award resulting from the Fee and Expense Motion.

8 9.5 Subject to court approval and within thirty (30) days of the Effective Date,
9 Verizon Wireless shall cause \$1,000.00 to be paid to Michelle Sims, in care of her counsel of
10 record, as an incentive award, unless there is an appeal concerning the incentive award, in which
11 case the payment shall be made after all appeals concerning that award have concluded and are
12 final.

13 10. Conditions of Settlement, Effect of Disapproval, Cancellation or Termination

14 10.1 The Effective Date of this Stipulation shall not occur unless and until each of the
15 following events occurs and shall be the date upon which the last (in time) of the following events
16 occurs:

17 (a) The Court has entered the Preliminary Approval Order, substantially in the
18 form attached hereto as Exhibit B;

19 (b) The Court has approved the Settlement, following notice to the Class and a
20 hearing, as provided in the Federal Rules of Civil Procedure, Rule 23(e), and has entered the Final
21 Judgment and Order of Dismissal With Prejudice, or a judgment substantially in the form of
22 Exhibit C; and

23 (c) The Final Judgment and Order of Dismissal With Prejudice has become
24 Final, as defined in Section 1.6, above, or, in the event that the Court enters an order and final
25 judgment in a form other than that provided above ("Alternative Judgment") and that has the
26 consent of the Parties, such Alternative Judgment becomes Final.

27 10.2 If some or all of the conditions specified in Section 10.1 are not met, or in the
28 event that this Stipulation is not approved by the Court, or the Settlement set forth in the

1 Stipulation is terminated or fails to become effective in accordance with its terms, then this
2 Stipulation shall be canceled and terminated subject to Section 10.3 unless Class Counsel and
3 Verizon Wireless' Counsel mutually agree in writing to proceed with this Stipulation. If any
4 Party is in material breach of the terms hereof, any other Party, provided that it is in substantial
5 compliance with the terms of this Stipulation, may terminate this Stipulation on notice to counsel
6 for all of the Settling Parties.

7 10.3 If this Stipulation is terminated or fails to become effective for the reasons set
8 forth in Sections 7.1 and 7.2 above, the Settling Parties shall be restored to their respective
9 positions in the Action as of July 25, 2008. In such event, any Final Judgment and Order of
10 Dismissal With Prejudice or other order entered by the Court in accordance with the terms of this
11 Stipulation shall be treated as vacated, nunc pro tunc and any certification of the Settlement Class
12 shall be null, void and without precedential effect of any kind.

13 11. Miscellaneous Provisions

14 11.1 The Settling Parties (a) acknowledge that it is their intent to consummate this
15 agreement; and (b) agree, subject to their fiduciary and other legal obligations, to cooperate to the
16 extent reasonably necessary to effectuate and implement all terms and conditions of this
17 Stipulation and to exercise their reasonable best efforts to accomplish the foregoing terms and
18 conditions of this Stipulation. Class Counsel and Verizon Wireless' Counsel agree to cooperate
19 with one another in seeking Court approval of the Order for Notice of Hearing, the Stipulation,
20 and the Settlement, and promptly to agree upon and execute all such other documentation as may
21 be reasonably required to obtain final approval of the Settlement.

22 11.2 The Settling Parties intend this Stipulation to be a final and complete resolution of
23 all disputes between them with respect to the Released Claims by Sims and the Settlement Class,
24 and each or any of them, on the one hand, against the Released Parties, and each or any of them,
25 on the other hand. Accordingly, the Settling Parties agree not to assert in any forum that the
26 Action was brought by Sims or defended by Verizon Wireless, or each or any of them, in bad
27 faith or without a reasonable basis.

28

1 11.3 The Settling Parties and their counsel agree that all press releases or affirmative
2 contacts with any members of the media concerning this settlement will be made jointly. The
3 Settling Parties agree that they will not claim any admission of wrongdoing by the other party or
4 make any false or misleading statement concerning the other party as a result of or relating to this
5 Settlement, whether by way of any press releases, press conferences, publication on the internet
6 or participation in any interview. Nothing herein will prohibit Class Counsel from including a
7 reference to this settlement in explaining their experience as class counsel, whether it be to the
8 courts, arbitrators, potential clients, or otherwise.

9 11.4 Whether or not the Effective Date occurs or this Stipulation is terminated, neither
10 this Stipulation nor the Settlement contained herein, nor any act performed or document executed
11 pursuant to or in furtherance of this Stipulation or the Settlement:

12 (a) Is, may be deemed, or shall be used, offered or received against the
13 Released Parties, or each or any of them, as an admission, concession or evidence of, the validity
14 of any Released Claims, the truth of any fact alleged by the Plaintiff, the deficiency of any
15 defense that has been or could have been asserted in the litigation, or of any alleged wrongdoing,
16 liability, negligence, or fault of the Released Parties, or any of them;

17 (b) Is, may be deemed, or shall be used, offered or received against Verizon
18 Wireless, as an admission, concession or evidence of, any fault, misrepresentation or omission
19 with respect to any statement or written document approved or made by the Released Parties, or
20 any of them;

21 (c) Is, may be deemed, or shall be used, offered or received against Sims or the
22 Settlement Class, or each or any of them, as an admission, concession or evidence of, the
23 infirmity or strength of any claims raised in the Action, the truth or falsity of any fact alleged by
24 Verizon Wireless, or the availability or lack of availability of meritorious defenses to the claims
25 raised in the Action;

26 (d) Is, may be deemed, or shall be used, offered or received against the
27 Released Parties, or each or any of them, as an admission or concession with respect to any
28 liability, negligence, fault or wrongdoing as against any Parties to the Stipulation, in any civil,

1 criminal or administrative proceeding in any court, administrative agency or other tribunal.
2 However, the Settlement, this Stipulation, and any acts performed and/or documents executed in
3 furtherance of or pursuant to this Stipulation and/or Settlement may be used in any proceedings as
4 may be necessary to effectuate the provisions of this Stipulation. However, if this Stipulation is
5 approved by the Court, any party or any of the Released Parties may file this Stipulation and/or
6 the Final Judgment and Order of Dismissal With Prejudice in any action that may be brought
7 against such party or parties in order to support a defense or counterclaim based on principles of
8 res judicata, collateral estoppel, release, good faith settlement, judgment bar or reduction or any
9 other theory of claim preclusion or issue preclusion or similar defense or counterclaim;

10 (e) Is, may be deemed, or shall be construed against Sims and the Settlement
11 Class, or each or any of them, or against the Released Parties, or each or any of them, as an
12 admission or concession that the consideration to be given hereunder represents an amount equal
13 to, less than or greater than that amount that could have or would have been recovered after trial;
14 and

15 (f) Is, may be deemed, or shall be construed as or received in evidence as an
16 admission or concession against Sims and the Settlement Class, or each and any of them, or
17 against the Released Parties, or each or any of them, that any of Plaintiffs' claims are with or
18 without merit or that damages recoverable under the Complaint would have exceeded or would
19 have been less than any particular amount.

20 11.5 The headings used herein are used for the purpose of convenience only and are not
21 meant to have legal effect.

22 11.6 The waiver by one party of any breach of this Stipulation by any other party shall
23 not be deemed as a waiver of any other prior or subsequent breaches of this Stipulation.

24 11.7 All of the Exhibits to this Stipulation are material and integral parts thereof and are
25 fully incorporated herein by this reference.

26 11.8 This Stipulation and its exhibits set forth the entire agreement and understanding
27 of the Parties with respect to the matters set forth herein, and supersedes all prior negotiations,
28 agreements, arrangements and undertakings with respect to the matters set forth herein. No

1 representations, warranties or inducements have been made to any party concerning this
2 Stipulation or its Exhibits other than the representations, warranties and covenants contained and
3 memorialized in such documents. This Stipulation may be amended or modified only by a
4 written instrument signed by or on behalf of all Settling Parties or their respective successors-in-
5 interest.

6 11.9 Except as otherwise provided herein, each Party shall bear its own costs.

7 11.10 Sims represents and warrants that she has not assigned any claim or right or
8 interest therein as against the Released Parties to any other person or party and that she is fully
9 entitled to release the same.

10 11.11 Each counsel or other Person executing this Stipulation, any of its Exhibits, or any
11 related settlement documents on behalf of any party hereto hereby warrants and represents that
12 such Person has the full authority to do so and has the authority to take appropriate action
13 required or permitted to be taken pursuant to the Stipulation to effectuate its terms.

14 11.12 This Stipulation may be executed in one or more counterparts. All executed
15 counterparts and each of them shall be deemed to be one and the same instrument provided that
16 counsel for the Parties to this Stipulation all exchange original signed counterparts. A complete
17 set of original executed counterparts shall be filed with the Court.

18 11.13 This Stipulation shall be binding upon, and inure to the benefit of, the successors
19 and assigns of the parties hereto and the Released Parties.

20 11.14 The Court shall retain jurisdiction with respect to implementation and enforcement
21 of the terms of this Stipulation, and all parties hereto submit to the jurisdiction of the Court for
22 purposes of implementing and enforcing the Settlement embodied in this Stipulation.

23 11.15 This Stipulation and the Exhibits thereto shall be considered to have been
24 negotiated, executed and delivered, and to be wholly performed, in the State of California and the
25 rights and obligations of the parties to this Stipulation shall be construed and enforced in
26 accordance with, and governed by, the internal, substantive laws of the State of California without
27 giving effect to that State's choice of law principles.

28

STIPULATION OF SETTLEMENT

Case No. C-07-1510-MC

sf-2522958

20

1 11.16 This Stipulation is deemed to have been prepared by counsel for all parties, as a
2 result of arms' length negotiations among the parties. Whereas all parties have contributed
3 substantially and materially to the preparation of this Stipulation, it shall not be construed more
4 strictly against one party than another.

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6 (The remainder of this page is intended to be blank. Signature page follows)

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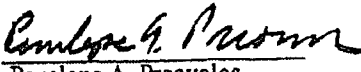
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1 IN WITNESS WHEREOF, the parties hereto have caused this Stipulation to be executed
2 by their duly authorized attorneys.

3 Aug. 5
4 ~~July~~, 2008

DAN MARMALEFSKY
PENELOPE A. PREOVOLOS
GEOFFREY GRABER
MORRISON & FOERSTER, LLP

8 By: 
9 Penelope A. Preovolos


10 Attorneys for Defendant
11 CELLCO PARTNERSHIP D/B/A
VERIZON WIRELESS

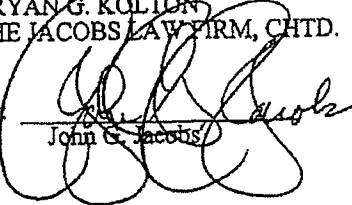
12 July 25, 2008

July 25, 2008

14 JAY EDELSON
15 MYLES McGUIRE
KAMBEREDELSON, LLC

JOHN G. JACOBS
BRYAN G. KOLTON
THE JACOBS LAW FIRM, CHTD.

16 By: 
17 Jay Edelson

16 By: 
17 John G. Jacobs

18 Attorneys for Plaintiff
19 MICHELLE SIMS

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

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

Plaintiff,

v.

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

Defendant.

Case No. 07-1510 MMC

[Hon. Maxine Chesney]

CLASS ACTION

**~~PROPOSED~~ ORDER
PRELIMINARILY APPROVING
SETTLEMENT AND PROVIDING
FOR NOTICE AND HEARING**

**[PROPOSED] ORDER PRELIMINARILY APPROVING SETTLEMENT,
CERTIFYING THE SETTLEMENT CLASS, AND PROVIDING FOR NOTICE AND
HEARING**

1 WHEREAS, a class action entitled *Sims v. Cellco Partnership d/b/a Verizon*
2 *Wireless, a Delaware General Partnership*, Case No. 3:07-cv-1510-MMC (the “Action”) is
3 pending before the Court;

4 WHEREAS, Plaintiff having made application, pursuant to Federal Rule of Civil
5 Procedure 23, for an order preliminarily approving the settlement of the Action, in
6 accordance with a Stipulation of Settlement (the “Stipulation”) which, together with the
7 Exhibits annexed thereto sets forth the terms and conditions for a proposed settlement of the
8 Action and for dismissal of the Action with prejudice upon the terms and conditions set
9 forth therein; and the Court having read and considered the Stipulation and the Exhibits
10 annexed thereto;

11 WHEREAS, all defined terms contained herein shall have the same meanings as
12 set forth in the Stipulation.

13 NOW, THEREFORE, IT IS HEREBY ORDERED:

14 1. The Court preliminarily approves the Stipulation and the Settlement set forth therein,
15 subject to further consideration and final approval at the Settlement Hearing described below.

16 2. Pursuant to Federal Rule of Civil Procedure 23, the Court certifies, solely for purposes
17 of effectuating this Settlement, a Settlement Class defined as: all past or present Verizon
18 Wireless Subscribers who were assigned a mobile telephone number previously assigned to
19 another owner or user, and who paid charges for third party mobile content that were authorized
20 by the prior owner and/or users of that mobile telephone number and not by the present
21 Subscriber, and for which the present Subscriber has not received a full credit or refund.

22 3. The Court appoints Jay Edelson of KamberEdelson, LLC and John G. Jacobs of The
23 Jacobs Law Firm, Chtd. as Lead Class Counsel, and further appoints Jay Edelson and Myles
24 McGuire of KamberEdelson, LLC, John G. Jacobs and Bryan G. Kolton of The Jacobs Law
25 Firm, Chtd., and Terry M. Gordon of Law Offices of Terry M. Gordon as Class Counsel.
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1 4. A hearing (the "Settlement Hearing") shall be held before this Court on July 24, 2009,
2 at 9:00 a.m., at the United States District Court for the Northern District of California, San
3 Francisco Division, Courtroom 7 (19th Floor), located at 450 Golden Gate Avenue, San
4 Francisco, California, to determine whether the proposed Settlement of the Action on the terms
5 and conditions provided for in the Stipulation is fair, just, reasonable, and adequate to each of the
6 Settling Parties and the Settlement Class and should be approved by the Court; whether a Final
7 Judgment and Order of Dismissal With Prejudice as defined in Section 1.7 of the Stipulation
8 should be entered herein; and to determine the amount of fees and expenses that should be
9 awarded to Plaintiff's Counsel and the amount of the incentive award that shall be awarded to
10 Plaintiff.

11 5. The Court approves, as to form and content, both the Notice of Pendency and
12 Settlement of Class Action and Settlement Hearing Thereon and the Claim Form, attached,
13 respectively, as Exhibit 1 and Exhibit 2 hereto, and finds that mailing and distribution of the
14 Notice and Claim Form substantially in the manner and form set forth in ¶ 6 of this Order meets
15 the requirements of Rule 23 of the Federal Rules of Civil Procedure and due process, and is the
16 best notice practicable under the circumstances and shall constitute due and sufficient notice to
17 all persons entitled thereto.

18 6. Verizon Wireless' Counsel is hereby authorized to retain EPIQ Systems, Inc. (the
19 "Settlement Administrator") to mail the class notice and administer the notice procedure as more
20 fully set forth below:

21 a. Verizon Wireless shall provide the most recent names and addresses of
22 Settlement Class Members, as contained in Verizon Wireless' books and records as of the date of
23 filing of the Order for Notice and Hearing, to the Settlement Administrator.

24 b. No later than February 20, 2009, the Settlement Administrator shall cause
25 a copy of the Notice and Claim Form to be posted on the internet at:
26 www.simsclasssettlement.com. Verizon Wireless will also make available a copy of the Notice
27 and Claim Form on the Legal Notices section of its website.
28

1 c. No later than March 13, 2009, the Settlement Administrator shall cause a
2 copy of the Notice and Claim Form to be sent by first class mail to the addresses provided by
3 Verizon Wireless.

4 d. No later than July 10, 2009, Verizon Wireless' Counsel shall serve on
5 Class Counsel and file with the Court proof, by affidavit or declaration, that the Settlement
6 Administrator has performed the functions described above.

7 7. All members of the Settlement Class who do not submit a valid request for
8 exclusion in accordance with ¶10 below shall be bound by all determinations and judgments in
9 the Action concerning the Settlement, whether favorable or unfavorable to the Settlement Class.

10 8. Settlement Class Members may enter an appearance in the Action, at their own
11 expense, individually or through counsel of their own choice. If they do not enter an appearance,
12 they will be represented by Class Counsel.

13 9. Pending final determination of whether the Settlement should be approved,
14 neither Plaintiff nor any Settlement Class Member, either directly, representatively, or in any
15 other capacity, shall commence or prosecute against any of the Released Parties, any action or
16 proceeding in any court or tribunal asserting any of the Released Claims.

17 10. Any person falling within the definition of the Settlement Class may, upon
18 request, be excluded from the Settlement Class. Any such Person must submit to the Settlement
19 Administrator a request for exclusion ("Request for Exclusion"), to be received or postmarked
20 no later than June 12, 2009. A Request for Exclusion must state: (a) the name, address, and
21 telephone number of the Person requesting exclusion, and (b) that the Person wishes to be
22 excluded from the Settlement Class. All Persons who submit valid and timely Requests for
23 Exclusion in the manner set forth in this paragraph shall have no rights under the Stipulation,
24 shall not share in the settlement relief, and shall not be bound by the Stipulation or the Final
25 Judgment.
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1 11. Any Settlement Class Member may appear and show cause (if he or she has any):
2 (1) why the proposed Settlement of the Action should or should not be approved as fair, just,
3 reasonable and adequate; (2) why a Final Judgment and Order of Dismissal With Prejudice
4 should or should not be entered thereon; and/or (3) why attorneys' fees and expenses should or
5 should not be awarded to Plaintiff's Counsel. However, no Settlement Class Member or any
6 other Person shall be entitled to contest the approval of the terms and conditions of the proposed
7 Settlement, or, if approved, the Final Judgment and Order of Dismissal With Prejudice to be
8 entered thereon approving the same, or the attorneys' fees and expenses to be awarded to
9 Plaintiff's Counsel unless that Person has (a) delivered by hand or sent by overnight or first-class
10 mail written objections and copies of any papers and briefs such that they are received no later
11 than June 12, 2009, to Jay Edelson, KamberEdelson LLP, 350 North LaSalle, Suite 1300,
12 Chicago, IL 60654, and Penelope A. Prevolos, Morrison & Foerster LLP, 425 Market Street,
13 San Francisco, CA 94105-2482, and (b) filed said objections, papers and briefs with the Clerk of
14 the Court, United States District Court for the Northern District of California, 16th Floor, 450
15 Golden Gate Avenue, San Francisco, California 94102, on or before June 12, 2009. Any
16 Settlement Class Member who does not make his or her objection in the manner provided herein
17 shall be deemed to have waived such objection and shall forever be foreclosed from making any
18 objection to the fairness or adequacy of the proposed Settlement as incorporated in the
19 Stipulation, to the Final Judgment and Order of Dismissal With Prejudice, and/or to the award of
20 attorneys' fees and reimbursement of expenses to Plaintiff's Counsel, unless otherwise ordered
21 by the Court.

22 12. The application by Class Counsel for attorneys' fees or reimbursement of
23 expenses shall be filed and served no later than July 10, 2009.

24 13. All papers in support of the Settlement and in response to any objections shall be
25 filed and served July 10, 2009.


26 14. At or after the Settlement Hearing, the Court shall determine whether any
27 application for attorneys' fees or reimbursement of expenses shall be approved.
28

1 15. Neither the Stipulation, nor any of its terms or provisions, nor any of the
2 negotiations or proceedings connected with it, shall be construed as: (1) an admission or
3 concession by Defendants of the truth of any of the allegations in the Action, or of any liability,
4 fault, or wrongdoing of any kind; or (2) an admission or concession by Plaintiff and/or the
5 Settlement Class of any infirmity in the claims asserted in the Action.

6 16. The Court reserves the right to adjourn the date of the Settlement Hearing
7 without further notice to the members of the Settlement Class, and retains jurisdiction to
8 consider all further applications arising out of or connected with the proposed Settlement.
9 The Court may approve the Settlement, with such modifications as may be agreed to by the
10 Settling Parties, if appropriate, without further notice to the Settlement Class.

11
12 Dated: February 18, 2009

By: Order of the United States
District Court for the Northern District
of California

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15 Hon. Maxine M. Chesney
16 UNITED STATES DISTRICT
17 JUDGE
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

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

Plaintiff,

v.

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

Defendant.

Case No. 3:07-cv-1510-MMC

CLASS ACTION

**NOTICE OF PENDENCY AND PROPOSED
SETTLEMENT OF CLASS ACTION**

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

If you were charged by Verizon Wireless for third party mobile content that you did not subscribe for but that was subscribed for by the previous owner or user of your mobile telephone number, you could be entitled to benefits under a class action settlement.

The United States District Court, Northern District of California, authorized this notice. This is not a solicitation from a lawyer.

If you are a member of the class and the Court approves the settlement:

- You may be eligible to receive up to a \$15 refund in the form of a credit on your Verizon Wireless bill or a cash payment.
- Your legal rights are affected whether you act or don't act. Please read this notice carefully.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
SUBMIT A CLAIM FORM	The only way to get a refund.
EXCLUDE YOURSELF	Get no refund. This is the only option that allows you to ever be part of any other lawsuit against Verizon Wireless about the legal claims in this case.
OBJECT	Write to the Court about why you don't like the settlement.
GO TO A HEARING	Ask to speak in Court about the fairness of the settlement.
DO NOTHING	Get no refund. Give up rights.

- These rights and options—and the deadlines to exercise them—are explained in this notice.
- The Court in charge of this case has preliminarily approved the settlement but still has to decide whether to give final approval to the settlement. Refunds will be made if the Court finally approves the settlement and after any appeals are resolved. Please be patient.

QUESTIONS? CALL (877) 283-6564 OR VISIT WWW.SIMSCLASSSETTLEMENT.COM

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

WHAT THIS NOTICE CONTAINS

BASIC INFORMATION PAGE 3

- 1. Why did I get this notice package?
- 2. What is this lawsuit about?
- 3. Why is this a class action?
- 4. Why is there a settlement?

WHO IS IN THE SETTLEMENT PAGE 4

- 5. How do I know if I am part of the settlement?
- 6. Are there exceptions to being included?
- 7. I'm still not sure if I am included.

THE SETTLEMENT BENEFITS—WHAT YOU GETPAGES 4-5

- 8. What does the settlement provide?
- 9. What can I get from the settlement?

HOW YOU GET A REFUND —

SUBMITTING A CLAIM FORM PAGE 5

- 10. How can I get a refund?
- 11. When would I get my refund?
- 12. What am I giving up to get a refund or stay in the Class?

EXCLUDING YOURSELF FROM THE SETTLEMENTPAGES 5-6

- 13. How do I get out of the settlement?
- 14. If I exclude myself, can I get money from this settlement?
- 15. If I don't exclude myself, can I sue Verizon Wireless for the same thing later?

THE LAWYERS REPRESENTING YOU PAGE 6

- 16. Do I have a lawyer in this case?
- 17. How will the lawyers be paid?

OBJECTING TO THE SETTLEMENTPAGES 6-7

- 18. How do I tell the Court that I don't like the settlement?
- 19. What's the difference between objecting and excluding?

THE COURT'S SETTLEMENT HEARINGPAGES 7-8

- 20. When and where will the Court decide whether to approve the settlement?
- 21. Do I have to come to the hearing?
- 22. May I speak at the hearing?

IF YOU DO NOTHING PAGE 8

- 23. What happens if I do nothing at all?

GETTING MORE INFORMATION PAGE 8

- 24. How do I get more information?
- 25. What if I have a new address?

QUESTIONS? CALL (877) 283-6564 OR VISIT WWW.SIMSCLASSSETTLEMENT.COM

BASIC INFORMATION

1. Why did I get this notice package?

You were sent this material because it appears you may be a past or present Verizon Wireless Subscriber (“Subscriber”) who was assigned a mobile telephone number previously assigned to another owner and/or users, and who paid charges for third party mobile content (such as ring tones, stock tips, horoscopes, jokes, etc.) that were authorized by the prior owner and/or users of that mobile telephone number and not authorized by you, and for which you have not received a full credit or refund.

The Court ordered this notice to be sent to you because you have a right to know about a proposed settlement of a class action lawsuit, and about your options, before the Court decides whether to give final approval to the settlement. If the Court gives its final approval and after any appeals are resolved, you will receive the refunds that the settlement allows.

This package explains the lawsuit, the settlement, your legal rights, what benefits are available, who is eligible for them, and how to get them.

The Court in charge of the case is the United States District Court for the Northern District of California, and the case is known as *Sims v. Cellco Partnership d/b/a Verizon Wireless, a Delaware General Partnership*, Case No. 3:07-cv-1510-MMC (N.D. Cal.). The person who sued is called Plaintiff, and the company she sued, Cellco Partnership d/b/a Verizon Wireless (“Verizon Wireless”), is called the Defendant.

2. What is this lawsuit about?

The lawsuit alleges that some Verizon Wireless Subscribers were assigned a “recycled” mobile telephone number and were charged for third party mobile content that they had not authorized, but rather were purportedly authorized by the previous owner and/or users of that mobile telephone number. The lawsuit alleges that this resulted in unauthorized charges to Subscribers’ accounts and seeks to represent a nationwide class of such Subscribers. Verizon Wireless denies that it has done anything wrong. The settlement is not an admission of wrongdoing.

3. Why is this a class action?

In a class action, one or more people, called Class Representatives (in this case Michelle Sims), sue on behalf of people who have alleged similar claims. All these people are a Class or Class Members. One court resolves the issues for all Class Members, except for those who exclude themselves from the Class.

4. Why is there a settlement?

The Court did not decide in favor of Plaintiff or Defendant. Instead, both sides agreed to a settlement. That way, they avoid the cost and risk of a trial and settlement benefits go to the Class Members now instead of, if at all, years from now. The Class Representative and her attorneys think the settlement is best for the Class Members.

1 **WHO IS IN THE SETTLEMENT**

2 To see if you will get a refund from this settlement, you first have to determine whether you
3 are a Class Member.

4 **5. How do I know if I am part of the settlement?**

5 The Court has decided that everyone who fits this description is a Class Member:

6 Those past or present Verizon Wireless Subscribers who, as reflected in Verizon Wireless’
7 records, were assigned a mobile telephone number previously assigned to another owner
8 and/or user, and who paid charges for third party mobile content that purportedly was
9 authorized by the prior owner and/or users of that mobile telephone number and not
authorized by the Settlement Class Member, and for which the Settlement Class Member has
not previously received a full credit or refund.

10 **6. Are there exceptions to being included?**

11 The Class does not include anyone who validly requests exclusion from the Settlement Class.

12 **7. I’m still not sure if I am included.**

13 If you are still not sure whether you are included, you can visit www.simsclasssettlement.com
14 for more information or you can call counsel for the Settlement Class at 866-354-3015.

15 **THE SETTLEMENT BENEFITS—WHAT YOU GET**

16 **8. What does the settlement provide?**

17 Verizon Wireless will provide one million dollars (\$1,000,000) to the Settlement Class. If
18 you submit a valid claim form you will be entitled to a refund or credit of up to fifteen dollars
19 (\$15) as further described in Section 9 below. If the valid claims submitted by Class
20 Members total less than one million dollars (\$1,000,000), the difference between the amount
21 of the total claims and one million dollars (\$1,000,000) will be distributed in the form of hand
22 sets and minutes donated to the National Domestic Violence Hope Line, or similar charitable
organization(s) to be agreed upon by the parties.

23 **9. What can I get from the settlement?**

24 If you submit a valid claim form you will be entitled to a refund or credit in the amount of
25 fifteen dollars (\$15), unless full payment of the claims submitted by all Class Members would
26 exceed one million dollars (\$1,000,000), in which case you will instead receive a *pro rata*
27 share of the one million dollars (\$1,000,000) (“Refund Amount”). If you previously received
28 a partial credit or refund, you will receive a refund for the amount of Disputed Charges for
which you did not previously receive a credit or refund, up to a maximum of the Refund
Amount.

QUESTIONS? CALL (877) 283-6564 OR VISIT WWW.SIMSCLASSETTLEMENT.COM

1 The Refund Amount shall be provided as follows: (a) in the form of a credit on your bill or,
2 in the sole discretion of Verizon Wireless, in the form of a cash payment, if you are a current
3 Subscriber; (b) in the form of a cash payment if you are a former Subscriber who is not
4 delinquent on your closed accounts for an amount in excess of \$15; and (c) if you are a former
5 Subscriber who is delinquent on your closed account, then you will receive a credit on the
6 delinquent account in an amount equal to the Refund Amount that otherwise would have been
7 payable under the settlement or, in the sole discretion of Verizon Wireless, a cash payment.

8 **HOW YOU GET A REFUND —SUBMITTING A CLAIM FORM**

9 **10. How can I get a refund?**

10 You must submit a claim form. You can either complete the form included with this notice
11 and mail it to Sims Settlement Administrator, P.O. Box 4109, Portland OR 97208-4109 or, in
12 the alternative, go to www.simsclasssettlement.com and submit a claim form electronically.
13 Make sure to follow all of the instructions on the claim form. **In order to be considered for
14 a refund, your claim form must be postmarked or received no later than June 12, 2009.
15 If your claim form is not postmarked or received by the required date, your claim will
16 be rejected, and you will be deemed to have waived all rights to receive any benefits
17 under this settlement.**

18 **11. When would I get my refund?**

19 The Court will hold a hearing on July 24, 2009 at 9:00 a.m., to decide whether to give final
20 approval to the settlement. If the Court gives final approval to the settlement, there may be
21 appeals. The appeal process can take time, perhaps more than a year. Please be patient.

22 **12. What am I giving up to get a refund or stay in the Class?**

23 Unless you exclude yourself, you stay in the Class, and that means that you can't sue,
24 continue to sue, or be part of any other lawsuit against Verizon Wireless about the legal issues
25 in this case. It also means that all of the Court's orders will apply to you and legally bind you.

26 **EXCLUDING YOURSELF FROM THE SETTLEMENT**

27 If you don't want a refund from this settlement, but you want to keep the right to sue or
28 continue to sue Verizon Wireless on your own about the legal issues in this case, then you
must take steps to get out. This is called excluding yourself -- or is sometimes referred to as
opting out of the Settlement Class.

QUESTIONS? CALL (877) 283-6564 OR VISIT WWW.SIMSCLASSSETTLEMENT.COM

1 **13. How do I get out of the settlement?**

2 To exclude yourself from the settlement, you must send a letter by mail saying that you want
3 to be excluded from *Sims v. Cellco Partnership d/b/a Verizon Wireless, a Delaware General*
4 *Partnership*, Case No. 3:07-cv-1510-MMC (N.D. Cal.). Be sure to include your name,
5 address, your current telephone number, and your signature and the name and number of the
6 case. You must mail your exclusion request postmarked no later than June 12, 2009, to:

7 Sims Settlement Administrator
8 P.O. Box 4109
9 Portland, OR 97208-4109

10 You can't exclude yourself on the phone or by fax or e-mail. If you ask to be excluded, you will
11 not get any refund, and you cannot object to the settlement. You will not be legally bound by
12 anything that happens in this lawsuit. You may be able to sue (or continue to sue) Verizon
13 Wireless in the future about the legal issues in this case. **In order to be valid, any request for
14 exclusion must be received or postmarked no later than June 12, 2009.**

15 **14. If I exclude myself, do I still receive benefits from this settlement?**

16 No. If you exclude yourself, do not send in a claim form to ask for a refund. But, you may sue,
17 continue to sue, or be part of a different lawsuit against Verizon Wireless about the legal issues in
18 this case.

19 **15. If I don't exclude myself, can I sue Verizon Wireless for the same thing later?**

20 No. Unless you exclude yourself, you give up the right to sue Verizon Wireless for the claims
21 that this settlement resolves. You must exclude yourself from *this* Class to pursue your own
22 lawsuit. Remember, your exclusion must be received or postmarked on or before June 12, 2009.

23 **THE LAWYERS REPRESENTING YOU**

24 **16. Do I have a lawyer in this case?**

25 The Court has appointed Jay Edelson of KamberEdelson, LLC and John G. Jacobs of The Jacobs
26 Law Firm, Chtd., to be the lead attorneys representing the Class. They are called the "Lead Class
27 Counsel." You will not be charged for these lawyers. If you want to be represented by your own
28 lawyer in this case, you may hire one at your own expense.

1 **17. How will the lawyers be paid?**

2 Class Counsel will ask the Court for attorneys' fees and expenses in the amount of \$289,980.07,
3 and an award to Plaintiff in the amount of \$1,000 for her services in helping to prosecute this
4 case. The Court has expressed no opinion about what amount would be appropriate
5 compensation for Class Counsel or Plaintiff and may award less than these amounts. Under the
6 proposed settlement, any amount awarded will be paid separately by Verizon Wireless and will
7 not come out of any funds for refunds to Class Members.
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OBJECTING TO THE SETTLEMENT

You can tell the Court that you don't agree with the settlement or some part of it.

18. How do I tell the Court that I don't like the settlement?

If you're a Class Member, you can object to the settlement if you don't like any part of it. You can give reasons why you think the Court should not approve it. The Court will consider your views. To object, you must send a letter (or legal "brief") saying that you object to the settlement in *Sims v. Cellco Partnership d/b/a Verizon Wireless, a Delaware General Partnership*, Case No. 3:07-cv-1510-MMC (N.D. Cal.). Be sure to include your name, address, telephone number, your Verizon Wireless phone number, your signature, the reasons you object to the settlement, and any supporting papers or other materials you intend to rely on for your objection. You must also specifically identify the Disputed Charges you incurred (and the mobile telephone number on which they were incurred) so that the Court can verify that you are a member of the class.

In order to be considered, any objection and supporting papers or other materials must be received no later than June 12, 2009, by all of the following addressees:

COURT	CLASS COUNSEL	DEFENSE COUNSEL
Clerk of the Court United States District Court for the Northern District of California San Francisco Division 450 Golden Gate Avenue 16th Floor San Francisco, CA 94102	Jay Edelson KamberEdelson, LLC 350 North LaSalle Suite 1300 Chicago, IL 60654	Penelope A. Prevolos Morrison & Foerster LLP 425 Market Street San Francisco, CA 94105- 2482

19. What's the difference between objecting and excluding yourself from the Class?

Objecting is simply telling the Court that you don't like something about the settlement. You can object only if you stay in the Class. Excluding yourself is telling the Court that you don't want to be part of the Class. If you exclude yourself, you have no basis to object, because the case no longer affects you.

THE COURT'S SETTLEMENT HEARING

The Court will hold a hearing to decide whether to give final approval to the settlement. You may attend, and you may ask to speak, but you don't have to.

1 **20. When and where will the Court hold the Settlement Hearing?**

2 The Court will hold a Settlement Hearing at 9:00 a.m. on July 24, 2009, at the United States
3 District Court for the Northern District of California, San Francisco Division, Courtroom 7 (19th
4 Floor), located at 450 Golden Gate Avenue, San Francisco, California, 94102. At this
5 hearing the Court will consider whether the settlement is fair, reasonable, and adequate. If there
6 are objections, the Court will consider them. The Court will listen to people who have asked to
7 speak at the hearing. The Court may also consider how much to pay Class Counsel, and whether
8 to approve an incentive award for Ms. Sims. After the hearing, the Court will decide whether to
9 give final approval to the settlement. We do not know how long these decisions will take. The
10 Settlement Hearing may be moved to a different date or time without notice.

11 **21. Do I have to come to the hearing?**

12 No. Class Counsel will answer questions the Court may have. But, you are welcome to come at
13 your own expense. If you send an objection, you don't have to come to Court to talk about it.
14 As long as your written objection was received on time, the Court will consider it. You may also
15 pay your own lawyer to attend, but it's not necessary. Finally, you may seek to intervene in the
16 action, but you need not do so.

17 **22. May I speak at the hearing?**

18 You may ask the Court for permission to speak at the Settlement Hearing. To do so, you must
19 send a letter informing the Court of your "Notice of Intention to Appear" in "*Sims v. Celco*
20 *Partnership d/b/a Verizon Wireless, a Delaware General Partnership*, Case No. 3:07-cv-1510-
21 MMC." Be sure to include your name, address, telephone number, and your signature. Your
22 Notice of Intention to Appear must be received by the Clerk of the Court, Class Counsel, and
23 Defense Counsel, at the three addresses listed in question 18, no later than **June 12, 2009**. You
24 cannot speak at the hearing if you excluded yourself.

25 **IF YOU DO NOTHING**

26 **23. What happens if I do nothing at all?**

27 If you do nothing, you'll get no money from this settlement. But, unless you exclude yourself,
28 you won't be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit
against Verizon Wireless about the legal issues in this case, ever again.

GETTING MORE INFORMATION

24. How do I get more information?

This notice is necessarily an incomplete summary of the settlement and its terms. You are free
to inspect the court files from 9:00 a.m. to 4:00 p.m. at the office of the Clerk of the Court,
United States District Court for the Northern District of California, 16th Floor, 450 Golden Gate

1 Avenue, San Francisco, California, 94102. You can call KamberEdelson LLC, one of the law
2 firms representing the class, at 866-354-3015 if you have any questions. Before doing so, please
3 read this full notice carefully. **Questions may not be directed to the Court.**

4 **25. What if I have a new address?**

5 If this Notice was sent to you at your current address, you do not have to do anything more to
6 receive future notices concerning this case. However, if this Notice was forwarded to you, or if
7 it was otherwise sent to you at an address that is not current, you should immediately send a
8 letter to Sims Settlement Administrator, P.O. Box 4109, Portland OR 97208-4109, referencing
9 this Notice and including your past and current mailing addresses. You should also provide a
10 telephone number where you can be reached with any questions.

11 Date: February 13, 2009.