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21 THE UNITED STATES DISTRICT COURT
22 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

23 In re:

24 JAMSTER MARKETING LITIGATION

25 This Document Relates To All Cases

26) MDL No. 1751

27) Master File No. 05-cv-0819-JM
28) (CAB)

29) **STIPULATION AND**
30) **SETTLEMENT AGREEMENT**

31 _____
32 STIPULATION AND SETTLEMENT AGREEMENT

This Stipulation and Settlement Agreement ("Agreement") is made and entered into by and among plaintiffs Charles Ford, Debra Szalanski, Carol Fox de Stefano, David Haslet, Gerald Shuck, Lloyd "Adam" Page, Eright Johnson, and Diane Cervantes (collectively, "Plaintiffs" or "Class Representatives"), individually and on behalf of the Settlement Class (as defined in Section II.5 below), and defendants Fox Mobile Distribution, LLC¹ ("Jamster"), VeriSign, Inc. ("VeriSign"), T-Mobile USA, Inc. ("T-Mobile"), AT&T Wireless Services, Inc. n/k/a New Cingular Wireless Services, Inc., and Cingular Wireless LLC, n/k/a AT&T Mobility LLC² (collectively, "Defendants"). Plaintiffs and Defendants are collectively referred to herein as the "Parties."

I. RECITALS

WHEREAS, by Order dated April 17, 2006, the Judicial Panel on Multidistrict Litigation ("JPML") established this "In re Jamster Marketing Litigation" multidistrict litigation (the "Action") "for coordinated or consolidated pretrial proceedings." Pursuant to 28 U.S.C. Section 1407, the JPML transferred overlapping putative class actions to the United States District Court for the Southern District of California (the "MDL Court"). The Action currently consists of four cases: *Ford, et al. v. VeriSign, Inc., et al.*, Case No. 05CV0891, originally filed in the United States District Court for the Southern District of California; *Cervantes v. Pacific Wireless LLC, et al.*, Case No. 4:05CV1469, originally filed in the United States District Court for the Southern District of California; *Herrington, et al. v. VeriSign, Inc., et al.*, Case No. 05CV1915 originally filed in the United States District Court for the Southern District of California; and *Page v. VeriSign, Inc., et al.*, Case No. 4:06CV906, transferred from the United States District Court, Eastern District of Arkansas;³

¹ Fox Mobile Distribution, LLC is the current name of the entity formerly known as Jamster LLC and is a successor to named defendant Jamster International Sarl Ltd.

² AT&T Wireless Services, Inc. n/k/a New Cingular Wireless Services, Inc., and Cingular Wireless LLC n/k/a AT&T Mobility LLC are collectively referred to herein as "AT&T."

³ The Parties are aware of a case entitled *Steffan v. VeriSign, Inc., et al.*, Case No. 08CV0579, filed in the United States District Court for the Southern District of California, which involves claims against Jamster and AT&T. This Settlement Agreement will encompass the claims included in that action.

1 WHEREAS, Plaintiffs allege the following claims in their pending First Amended
2 Coordinated Class Action Complaint: 1) fraud; (2) negligent misrepresentation; (3) violation of the
3 Federal Telecommunications Act and the Truth-In-Billing Act; (4) unjust enrichment; (5) breach of
4 contract; (6) violation of the California Consumers Legal Remedies Act; (7) false advertising in
5 violation of California Business & Professions Code § 17500; (8) unfair competition in violation of
6 California Business & Professions Code § 17200 *et seq.*; and (9) unfair competition by contracting
7 with minors in violation of California Business & Professions Code § 17200 *et seq.* Except for the
8 alleged claims for violation of the Federal Telecommunications Act and the Truth-In-Billing Act,
9 which are brought only against AT&T and T-Mobile, and the claims for violation of the California
10 Business & Professions Code § 17500, *et seq.*, which are brought only against VeriSign and
11 Jamster, all of the claims are asserted against all Defendants;

12 WHEREAS, Plaintiffs assert such claims both individually on behalf of a putative class and
13 subclass, but have not yet filed a motion to certify any claim for class treatment pursuant to Federal
14 Rule of Civil Procedure 23;

15 WHEREAS, Defendants' settlement of the action is not, and should not be construed as, an
16 admission of any liability by Defendants, which is expressly denied;

17 WHEREAS, the Parties have vigorously litigated the Action, including multiple appeals
18 from the district court proceeding;

19 WHEREAS, the Parties and their counsel have conducted an extensive investigation and
20 evaluation of the facts and law;

21 WHEREAS, the Parties participated in an extensive and exhaustive mediation session with
22 Justice Howard Wiener (Ret.) ("Mediator") on April 21, 2009, and have negotiated since that date
23 with the Mediator's assistance toward the goal of resolving the Action;

24 WHEREAS, Plaintiffs and Class Counsel, AT&T and counsel for the plaintiff in *McFerren*
25 *v. AT&T Mobility*, pending in Fulton County, Georgia state court, have agreed that Plaintiffs, as
26 objectors to the *McFerren* settlement, will, conditioned on preliminary approval of the settlement by
27 the Court in this Action, withdraw their objections to that settlement on condition that the claims
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1 encompassed within this Action, which include all claims relating to Jamster or the marketing,
2 advertising, selling or billing of mobile content or services offered by Jamster, will, conditioned on
3 preliminary approval of this settlement by the Court in the Action, be resolved in this Action and
4 not through any settlement in the *McFerren* action; and AT&T will, conditioned on preliminary
5 approval of the settlement by the Court in the Action, withdraw as moot its appeal before the United
6 States Court of Appeals for the Ninth Circuit related to this Court's injunction regarding the
7 *McFerren* action.

8 WHEREAS, in view of the costs, risks, and delay of continued litigation balanced against
9 the benefits of settlement to the Settlement Class, Plaintiffs and Class Counsel have concluded that
10 the settlement as provided in this Agreement was and is in the best interests of the Settlement Class
11 and that the settlement provided in this Agreement represents a fair, reasonable and adequate
12 resolution of the Action;

13 WHEREAS, the Parties desire to compromise and settle all issues and claims that have been
14 brought, or that could have been brought, in the Action by or on behalf of members of the
15 Settlement Class;

16 WHEREAS, the Parties desire and intend to seek Court approval of the settlement of the
17 Action as set forth in this Agreement and, upon Court approval, to seek a final order and judgment
18 from the Court approving this Agreement, dismissing the Released Claims with prejudice, and
19 permanently enjoining all members of the Settlement Class from bringing any Released Claim
20 against any Released Party;

21 WHEREAS, this Agreement is without prejudice to the rights of Defendants to: (i) seek to
22 compel arbitration of any claim in any forum, excepting claims arising under this Agreement by
23 class members who have not opted out; (ii) oppose Class certification in this Action should this
24 Agreement not be approved or implemented for any reason; (iii) oppose certification in any other
25 proposed or certified class action; or (iv) use the certification of the Class to oppose certification of
26 any other proposed or existing class arising out of or related to the Released Claims; and

27 WHEREAS, the Parties agree to undertake their best efforts to effectuate the terms and
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1 purposes of this Agreement, to secure the Court's approval of it, and to oppose any appeals from
2 any orders of final approval;

3 NOW, THEREFORE, the Parties to this Agreement agree as follows:

4 **II. DEFINITIONS**

5 The following are definitions applicable to this Agreement. Definitions contained elsewhere
6 in this Agreement shall also be effective.

- 7 1. "Action" – means the "In re: Jamster Marketing Litigation" Multidistrict
8 Litigation, MDL No. 1751 in the United States District Court for the Southern
9 District of California, including the following actions: *Ford, et al. v. VeriSign,*
10 *Inc., et al.*, Case No. 05CV0891, originally filed in the United States District
11 Court for the Southern District of California; *Cervantes v. Pacific Wireless LLC,*
12 *et al.*, Case No. 4:05CV1469, originally filed in the United States District Court
13 for the Southern District of California; *Herrington, et al. v. VeriSign, Inc., et al.*,
14 Case No. 05CV1915, originally filed in the United States District Court of the
15 Southern District of California; and *Page v. VeriSign, Inc., et al.*, Case No.
16 4:06CV906, transferred from the United States District Court, Eastern District of
17 Arkansas.
- 18 2. "Agreement" – refers to this Settlement Agreement and all exhibits thereto.
- 19 3. "Authorized Claimant" – means any member of the Settlement Class who timely
20 submits a valid Claim Form.
- 21 4. "Bill Insert" – refers to the short form notice substantially in the form attached
22 hereto as Exhibit F.
- 23 5. "Claim Form" – refers to the Claim Form substantially in the form attached hereto
24 as Exhibit B.
- 25 6. "Class" or "Class Members" or "Settlement Class" – means any person or entity
26 in the United States who, at any time from March 8, 2001 to the date of the Order
27 Granting Preliminary Approval, was subscribed to or has paid for a Jamster
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mobile content service plan or Jamster services or content.

7. “Class Counsel” – means the law firms that have represented Plaintiffs and the Class in this Action.

8. “Class Counsel’s Attorneys’ Fees” – refers to the amount awarded to Plaintiffs’ attorneys by the Court for prosecuting the Action, including all costs and expenses.

9. “Class Representatives” or “Plaintiffs” – means named plaintiffs Charles Ford, Debra Szalanski, Carol Fox de Stefano, David Haslet, Gerald Shuck, Diane Cervantes, Eright Johnson, and Lloyd “Adam” Page.

10. “Class Representative Enhancements” – means the sums approved by the Court to be paid to Plaintiffs as enhancement for their role as Class Representatives, and for the risks and work attendant to that role.

11. “Defendants” – means Jamster, VeriSign, AT&T, and T-Mobile.

12. “Final Approval Hearing” – means the hearing to be conducted by the United States District Court for the Southern District of California on such date as the Court may order to determine the fairness, adequacy and reasonableness of this Settlement and whether to enter the Final Order, Permanent Injunction, and Judgment finally approving and implementing the terms of this Agreement.

13. “Final Judgment” – refers to the Final Order, Permanent Injunction, and Judgment in substantially the form attached hereto as Exhibit D.

14. “Motion for Preliminary Approval” – refers to the motion for preliminary approval of the Settlement and its supporting papers.

15. “Notice” – refers to the Notice of Proposed Settlement and Proposed Hearing Date for Court Approval, substantially in the form attached hereto as Exhibit A.

16. “Opt-Out Period” -- means the period for submitting a request for exclusion from the Settlement Class as specified in Section III.D.

17. “Order Granting Preliminary Approval” – refers to the order granting preliminary

approval of the Settlement, in substantially the form attached hereto as Exhibit C.

18. "Preliminary Approval Hearing" -- means the hearing to be conducted by the United States District Court for the Southern District of California to determine whether to grant the Motion for Preliminary Approval.

19. "Released Claims" -- are defined in Section III.F.2.

20. "Released Parties" -- are defined in Section III.F.1.

21. "Settlement Date" -- means: (a) if there are no appeals of the Final Judgment, the date after expiration of any and all available appeal periods following entry of the Final Judgment; and (b) if any appeals are filed from the Final Judgment, the latter of: (i) the date of final affirmance on an appeal of the Final Judgment; (ii) the expiration of the time for a petition for review by the United States Supreme Court to review the Final Judgment and, if review is granted, the date of final affirmance of the Final Judgment following review; (iii) the date of final dismissal of any appeal from the Final Judgment or the final dismissal of any proceeding on certiorari to review the Final Judgment.

22. "Settlement Amounts" -- refers to the amount of funds to be paid to Class Members calculated pursuant to Section III.B.3.

23. "Settlement Payments" -- means the payment by the Claims Administrator of the Settlement Amounts, as described in Section III.C.6.

24. "Settlement Class Member" -- means any person who is included in the Settlement Class.

25. "Settlement Period" -- means March 8, 2001 to and including the date of Preliminary Approval.

26. "Settling Parties" -- means Plaintiffs, Defendants, and the Settlement Class.

27. "Short Form Notice" -- means the text substantially in the form attached hereto as Exhibit F.

28. "Subscription" -- means a Jamster mobile content service plan with recurring

charges (such as monthly or weekly charges for the plan).

29. "Summary Notice" – refers to the notice to be given to the Class by publication, substantially in the form attached hereto as Exhibit E.

30. "United States" means the fifty (50) United States and its territories.

III. TERMS AND CONDITIONS

A. Class Definition

All persons or entities in the United States who, at any time from March 8, 2001 to the date of the Preliminary Approval, were subscribed to and/or have paid for a Jamster mobile content service plan or Jamster services or content.

B. Settlement Consideration

1. Jamster Advertising Disclosures and Service Improvements

In consideration for this Settlement, and to the extent that they are not already in place, no later than 30 days after the Settlement Date, Jamster will take the following actions:

(1) Not use the terms "free," "complimentary," "no charge," "without charge," or any other term that reasonably leads a consumer to believe that he or she may receive something of value, entirely or in part without a requirement of compensation in any form, or that tends to convey the impression to the consuming public that an article of merchandise or service is "free," (collectively "Free Terminology") unless the initial representation shall also clearly state, as applicable, that the free item may be received by a consumer pursuant to his or her authorization of billing for a paid subscription plan, the price of the plan, and its term, if such authorization is in fact required to obtain the free item. For instance, a free ringtone offer requiring a consumer to subscribe to a monthly subscription plan at a cost of \$9.99 per month shall say, "Free ringtone with paid monthly subscription of \$9.99/month." Nothing in this section or Agreement shall preclude the use of Free Terminology by Jamster or its agents if Jamster products are being provided on Jamster's part free of charge to the consumer, even though such products may be subject to standard carrier messaging and data charges, provided that Jamster advises consumers that standard carrier messaging and data charges may apply in a manner consistent with the Mobile Marketing

1 Association ("MMA") guidelines.

2 (2) Not use promotions for the marketing of its content unless it substantially complies
3 with the following:

4 (a) Clearly discloses the price and billing period of any recurring charge for the
5 third-party wireless content adjacent to the cell phone submit field and the
6 P.I.N. code submit field, e.g., "\$9.99 per month";

7 (b) Clearly discloses on the cell phone number submit webpage and the P.I.N.
8 code submit webpage the following material terms and conditions:

9 (i) The initial and recurring charge for content, goods or services.

10 (ii) Whether other carrier charges may apply.

11 (iii) If the offer is for a recurring subscription plan, that the consumer will
12 be charged automatically with no further action on the part of the
13 consumer; the frequency with which the charge will automatically be
14 made to the account in the absence of cancellation of the plan; and
15 that the consumer will continue to receive the charges until the
16 consumer cancels the plan.

17 (iv) How to cancel the plan.

18 (v) The mechanism for charging the consumer, e.g., "on your cell phone
19 bill or deducted from your prepaid balance on your cell phone
20 account."

21 (c) Have a hyperlink to the terms and conditions of the offer on every cell phone
22 submit webpage and PIN code submit webpage in the order path.

23 (3) In a manner consistent with the MMA guidelines, where content is available only
24 through certain carriers, clearly disclose that the content is not available through all
25 carriers and clearly disclose for each type of content, the carriers that support each
26 type of content being advertised.

27 (4) In a manner consistent with the MMA guidelines, where content is only available on
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1 certain makes or models of mobile devices, clearly disclose that the content is not
2 available on all phones.

3 Jamster will also continue to provide systems, processes, and training to support the ability
4 of its customers to have a free and ready means to address billing issues and cancel mobile content
5 subscriptions via a single point of contact or through an equally effective means to address such
6 issues.

7 Jamster has made changes to its advertising since the inception of this Action, consistent
8 with the MMA guidelines. Jamster has implemented liberal refund policies and made significant
9 refunds of Jamster mobile content charges since the inception of this Action.

10 **2. Monetary Considerations**

11 Jamster shall refund the amount of past unauthorized charges for Jamster mobile content
12 purchases billed to any Settlement Class Member who submits a valid and timely Claim Form. The
13 refund shall be capped at an amount equal to three monthly Subscription charges. This cap shall be
14 on a per wireless telephone line basis. A Settlement Class Member submitting a Claim Form with
15 respect to one telephone line may receive no more than an amount equal to three monthly
16 Subscription charges. However, a Settlement Class Member submitting a Claim Form with respect
17 to multiple telephone lines may receive up to an amount equal to three monthly Subscription
18 charges for each telephone line.

19 **C. Administration, Notification, and Payment Process**

20 **1. Claims Administration**

21 The Parties have selected Rust Consulting, Inc. to act as a third party professional claims
22 administrator (the "Claims Administrator"), which shall be responsible for providing the settlement
23 notifications to appropriate Federal and State officials under 28 U.S.C. § 1715; overseeing and
24 monitoring the parties' settlement notice plan to Class Members; receiving and reviewing the Claim
25 Forms submitted by Settlement Class Members to determine eligibility for payment as a Settlement
26 Class Member and the amount of any such payment; and for mailing settlement payments and
27 keeping records of such payments made to Settlement Class Members who submit valid Claims
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Forms. The Claims Administrator shall provide reports and other information to the Court as it may require. The Claims Administrator shall also provide counsel for the Parties with reports and information concerning notice, administration, payment, and implementation of the Settlement. Should the Court request, the Parties, in conjunction with the Claims Administrator, shall submit a timely report to the Court summarizing the work performed by the Claims Administrator, including a report of all amounts paid to Settlement Class Members. The Claims Administrator shall cause a website to be created containing a copy of this Agreement, the Notice and all exhibits, and any other information or documents to which the Parties agree.

2. Notice

Upon Preliminary Approval of the Agreement (and as the Court directs), the Parties (or their designee) shall cause the Notice to be disseminated to potential Class members as provided herein. Notice shall comport with due process and be effectuated pursuant to a Notice Plan.

The Notice Plan shall include:

(a) Publication of the Summary Notice shall be made as follows:

- (i) *Parade* – 2/5 page advertisement inserted into 475 newspapers;
- (ii) *Cosmopolitan* – 2/3 page advertisement;
- (iii) *ESPN The Magazine* – 2/3 page advertisement;
- (iv) *Jet* – Full page advertisement;
- (v) *Maxim* – 2/3 page advertisement;
- (vi) *People* – Full page advertisement;
- (vii) *MySpace* – Banner advertisements for an estimated 12,000,000 total gross impressions; and
- (viii) Keyword sponsorship with major search engines.

The text of such Summary Notice is provided in Exhibit E. The publication notice will be completed within 120 days after the Order Granting Preliminary Approval.

(b) A short form paper Bill Insert shall be provided to current direct bill AT&T and T-Mobile customers who receive bills by paper. Current AT&T and T-Mobile customers who receive

1 bills electronically will receive an electronic version of the Short Form Notice with a hotlink to a
2 website created by the Administrator with the Notice and Claim Form. A Bill Insert or Short Form
3 Notice shall be provided only to those AT&T and T-Mobile customers who, according to a
4 reasonable search of AT&T's and T-Mobile's respective billing systems, were charged for at least
5 one Jamster product during the Settlement Period. The text of such Bill Insert and Short Form
6 Notice is provided in Exhibit F. Sending of the Bill Insert or Short Form Notice will be completed
7 within 120 days after Preliminary Approval.

8 (c) Within 30 days following Preliminary Approval, the complete Settlement Agreement
9 and Notice, which is attached as Exhibit A, shall be posted on a website to be administered by the
10 Claims Administrator. By the time the Summary Notice is published or the Bill Insert or Short
11 Form Notice sent, the website administered by the Claims Administrator shall be complete and
12 contain a functioning Claim Form for online submission of claims.

13 **3. Claims Submission**

14 To be entitled to a Settlement Payment, Settlement Class Members must submit a valid,
15 timely Claim Form. A Claim Form will be available on a website to be created by the Claims
16 Administrator. Any Class Member unable to complete an online Claim Form may call a toll free
17 number, provide their name and address, and receive a paper Claim Form. Paper Claim Forms may
18 be mailed, hand delivered, or sent by facsimile to the Claims Administrator.

19 To be timely, Claim Forms must be postmarked, hand delivered, sent by facsimile, or
20 submitted online to the Claims Administrator no later than 180 days after the Court issues the Order
21 Granting Preliminary Approval of this Settlement (the "Claims Deadline"). The Claims
22 Administrator shall reject any claims not submitted in accordance with the above procedures.
23 However, nothing in this provision shall be construed to prevent the Claims Administrator, in its
24 discretion, from permitting a Settlement Class Member to remedy other deficiencies in such
25 Settlement Class Member's Claim Form.

26 **4. Processing and Validation of Claims**

27 All claims shall be validated by the Claims Administrator to determine whether they comply
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1 with the claim process and to verify that the charges have not already been refunded. The Claims
2 Administrator may reject a claim if there is identifiable evidence of invalidity or fraud, such as the
3 claimant's name not matching the name of the class member associated with the provided telephone
4 number(s), multiple claim forms are submitted with respect to the same charges, the claimant did
5 not incur a claimed charge, or a Jamster charge claimed was previously refunded. The Claims
6 Administrator shall make the determination of validity of the claim based on a totality of the
7 circumstances outlined in this Agreement and shall have a right to request reasonable additional
8 information. Information provided to the Claims Administrator by any of the Defendants shall be
9 deemed confidential and shall not be disclosed except to the Claims Administrator, counsel for the
10 parties, and/or a third-party neutral selected to resolve claim disputes, as set forth in Section III.C.5,
11 below.

12 A Claim Form may be rejected based on the following reasons:

- 13 (i) If a class member fails to sign the Claim Form;
- 14 (ii) If a class member does not include his or her name or address information on the
15 Claim Form;
- 16 (iii) If the Claim Form does not include the telephone number(s) that the charges were
17 billed to; or
- 18 (iv) If the Claim Form is not received by the Claims Deadline.
- 19 (v) If no box is checked indicating the number of months, then the claim will be
20 considered to be for the lowest number of months (1). If no box is checked for recurring charge
21 amount, then the claim will be considered to be for the lowest recurring charge amount. A Class
22 Member cannot receive payment under this Settlement Agreement for more than his or her actual
23 amount of Jamster charges.

24 If a Class Member has already received a refund or credit for Jamster charges, the Class
25 Member is still entitled to make a claim under this Settlement Agreement for any remaining Jamster
26 charges. Such a claim for any remaining charge is subject to the three-month subscription charge
27 cap per wireless telephone number and the other terms and conditions of this Section 4. However,
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1 prior refunds will count against the cap if there is evidence that the class member entered into a new
2 subscription for a Jamster product following the prior refund.

3 Any refund of Jamster charges made in connection with the *McFerren* Action shall not
4 count against the three-month subscription charge cap per wireless telephone number.

5 The Claims Administrator shall not provide a Settlement Payment for any charge associated
6 with a claim that has been previously refunded.

7 **5. Resolution of Claim Disputes**

8 If a Settlement Class Member disputes the resolution of its Claim Form, either with regard
9 to its validity or amount, counsel for Jamster and Plaintiffs shall work to resolve the dispute. If
10 counsel for Jamster and Plaintiffs cannot resolve the dispute, then documentation involving all
11 unresolved disputes shall be submitted to a third-party neutral, to be either jointly agreed to by the
12 Parties, or, if no such agreement is reached, as selected by the Court. The third-party neutral will
13 resolve the dispute based on the documentation provided by the Settling Parties. The cost of the
14 third-party neutral shall be borne by Jamster.

15 **6. Settlement Expenses and Payments**

16 Claims Administration Expenses: Jamster shall be solely responsible to pay all Claims
17 Administration expenses, including but not limited to reasonable fees and costs for the third-party
18 neutral and Claims Administrator. Jamster will provide the Claims Administrator with a \$250,000
19 retainer. These funds will be deposited into an interest bearing account, and the Claims
20 Administrator will draw its periodic payments from this account. Any funds that are not used shall
21 be returned to Jamster. In the event that costs and expenses exceed the retainer, the Claims
22 Administrator shall regularly bill Jamster for the additional amounts.

23 Settlement Payments: No later than 10 days after the Settlement Date, Jamster shall provide
24 the Claims Administrator with funds in the amount of the cumulative claims submitted by
25 Authorized Claimants. The Claims Administrator shall deposit these funds into an interest-bearing
26 qualified settlement fund (in an institution and type of account to which the Parties mutually agree)
27 (the "Qualified Settlement Fund"). Upon these funds being deposited in the Qualified Settlement
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1 Fund, the Claims Administrator shall be authorized to make payment of the Settlement Amounts by
2 check to each Authorized Claimant in the amount calculated as described in Section III.B.3 above.
3 Payments will be made within 30 days after the Settlement Date. Checks shall be valid for 120
4 days, and the Qualified Settlement Fund shall close when no outstanding checks remain valid. Any
5 accrued interest or remaining funds in the Qualified Settlement Fund as of the date of closing shall
6 first be used to offset any outstanding, unpaid costs and charges of the Claims Administrator. Any
7 remaining amounts shall be refunded to Jamster.

8 **D. Opt-Outs and Objections**

9 A Class Member may opt out of the Class at any time during the Opt-Out Period. Opt-outs
10 must be post-marked by 165 days after the Court issues the Order Granting Preliminary Approval,
11 which is the end of the Opt-Out Period. In order to exercise the right to opt out, a Class Member
12 must provide to the Claims Administrator his or her full name and address along with a signed
13 statement by the Class Member that he or she is electing to opt out of the Jamster Marketing
14 Litigation settlement. The statement must be postmarked by or delivered to the Claims
15 Administrator by 165 days after the Court issues the Order Granting Preliminary Approval. Except
16 for those potential Class Members who have properly opted out, all Class Members will be deemed
17 a Class Member for all purposes under this Agreement. Any potential Class Member who elects to
18 opt out of the Class shall not: (i) be bound by any orders or judgments entered in this Action; (ii) be
19 entitled to relief under or be affected by this Agreement; (iii) gain any rights by virtue of this
20 Agreement; or (iv) be entitled to object to any aspect of this Agreement. The request for exclusion
21 must be personally signed by the person requesting exclusion. So called "mass" or "class" opt-outs
22 shall not be allowed.

23 Any member of the Settlement Class who intends to object to the fairness of the Settlement
24 must individually file any such objection with the Court no later than 165 days after the Court issues
25 the Order Granting Preliminary Approval, and provide a copy of the objection to Robert W.
26 Thompson, Callahan, Thompson, Sherman & Caudill, LLP, 2601 Main Street, Suite 800, Irvine,
27 California 92614, and to Ronald L. Johnston, Arnold & Porter LLP, 777 S. Figueroa Street, 44th
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1 Floor, Los Angeles, California, 90017. Any objector to the Settlement must provide the full name,
2 address, and telephone number of the Class Member objecting, the full name, title and authorization
3 of the individual presenting the objection on behalf of the Class Member, and state in writing all
4 objections, the reasons for such objections, and whether the objector intends to appear at the Final
5 Approval Hearing at such time and date as the Court may order. Any member of the Settlement
6 Class who does not file a timely written objection to the Settlement shall be foreclosed from seeking
7 review of the Settlement by appeal or otherwise.

8 **E. Preliminary And Final Approval; Final Order, Permanent Injunction, And**
9 **Judgment**

10 Plaintiffs shall apply to the Court for entry of the Order Granting Preliminary Approval and
11 for a schedule for a Final Approval Hearing, in the form attached as Exhibit C. After entry of the
12 Order Granting Preliminary Approval, Notice to the Settlement Class will be provided as set forth
13 above.

14 If the Court enters the Order Granting Preliminary Approval and all other conditions
15 precedent to the Settlement have been satisfied, counsel for Plaintiffs shall move for entry of a Final
16 Judgment in substantially the form attached as Exhibit D.

17 Upon entry of the Final Judgment, the Action, including the civil actions referenced at II.(1)
18 above, shall be dismissed with prejudice. Defendants, the Settlement Class, and the Class
19 Representatives expressly waive any and all rights to appeal any orders issued by the Court in
20 connection with this Action, except as otherwise provided elsewhere in this Agreement.

21 **F. Releases**

22 As of the Settlement Date, the members of the Settlement Class, or anyone acting on their
23 behalf or in their interest, fully, finally, and forever settle, release, and discharge the Released
24 Parties – as defined below in subparagraph (1) – from the Released Claims – as defined below in
25 subparagraph (2) – and are forever barred and enjoined from asserting any of the Released Claims
26 in any court or forum whatsoever. The provisions of any state, federal, municipal, local, or
27 territorial law or statute providing in substance that releases shall not extend to claims, demands,
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1 injuries, or damages that are unknown or unsuspected to exist at the time this Agreement is
2 executed and approved by the trial court, are hereby expressly, knowingly, and voluntarily waived
3 by all members of the Settlement Class as they pertain to the Released Claims. In addition, to the
4 extent applicable to Released Claims, members of the Settlement Class waive the application of
5 Section 1542 of the California Civil Code (and any similar law of any other state), which provides
6 that: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR
7 DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF
8 EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE
9 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."

10 **1. Released Parties**

11 As used in this Agreement, the term "Released Parties" shall mean Defendants and all third-
12 parties, including other wireless service providers, mobile content aggregators and integrators As
13 used in this Agreement, the term "Released Parties" shall mean Defendants and all third-parties,
14 including other wireless service providers, mobile content aggregators and integrators that have sold
15 or distributed Jamster content, namely, Alltel Corporation, Boost Mobile, Cellco Partnership dba
16 Verizon Wireless, Cincinnati Bell Inc., Dobson Communications Corp., Leap Wireless Intl., Inc.
17 (including its Cricket brand), mBlox, Inc., m-Qube, Inc., Sprint Nextel Corp. (including its Credo
18 brand), Sybase, Inc (including Sybase 365 formerly known as m365 or mobile 365), Unimobile,
19 Verizon Communications Inc., Virgin Mobile USA, Inc., and Vodafone Group PLC, and the past or
20 present directors, officers, employees, partners, principals, agents, underwriters, issuers, insurers,
21 co-insurers, reinsurers, controlling shareholders, attorneys, accountants, auditors, banks or
22 investment bankers, advisors, personal or legal representatives, predecessors, successors, parents,
23 subsidiaries, licensees, licensors, divisions, joint ventures and co-joint venturers, assigns, associates,
24 affiliates, resellers, and related entities of any of the foregoing, and any entities in which Defendants
25 have or have had a controlling interest or that have controlled any Defendant at any relevant time.
26

27 **2. Released Claims**

1 As used in this Agreement, the term "Released Claims" shall mean any and all
2 claims or causes of action of any nature whatsoever, regardless of legal theory and the type of relief
3 or damages claimed, including but not limited to any claim for violations of federal, state, or other
4 law (whether in contract, tort, or otherwise, including statutory, common law, property, and
5 equitable claims), and also including "Unknown Claims" (as defined below in subparagraph (3)),
6 that have been asserted against the Released Parties in the Action or any claims that could have
7 been asserted in the Action or in any other complaint, action, or litigation in any other court or
8 forum based upon or in any way relating to Jamster or the marketing, advertising, selling or billing
9 of mobile content or services offered by Jamster during the Settlement Period against the Released
10 Parties. Notwithstanding the foregoing release or any other provision in the Settlement Agreement,
11 nothing in this Settlement Agreement shall constitute a release of any demand, claim, right or action
12 that any Released Party may have against any other Released Party.

13 **3. Unknown Claims**

14 As used in this Agreement, the term "Unknown Claims" means any and all Released Claims
15 that any member of the Settlement Class, or anyone acting on their behalf or in their interest, does
16 not know or even suspect to exist against any of the Released Parties which, if known, might have
17 affected its, his or her decision regarding the settlement of the Action. The members of the
18 Settlement Class shall further acknowledge that they may hereafter discover facts in addition to or
19 different from those that they now know or believe to be true concerning the subject matter of this
20 release, but nevertheless fully, finally, and forever settle and release any and all Released Claims,
21 known or unknown, suspected or unsuspected, contingent or non-contingent, which now exist, may
22 hereafter exist, or heretofore have existed based upon actions, conduct, events or transactions
23 occurring on or before the date of this Agreement, without regard to subsequent discovery or
24 existence of such different or additional facts concerning each of the Released Parties.

25 **G. Termination**

26 In the event that the Court refuses to (1) enter the Order Granting Preliminary Approval in
27 substantially the form attached as Exhibit C, (2) approve the Settlement following Notice to the
28

1 Settlement Class and the Final Approval Hearing, or (3) enter a Final Judgment in substantially the
2 form attached as Exhibit D, Defendants and Plaintiffs, and each of them, shall have the right to
3 terminate this Agreement by providing written notice to the other within fourteen (14) days of
4 receipt of notice from the Court of the occurrence of any conditions set forth in G(1)-(3) above.
5 Each Party shall have the right to terminate this Agreement if the Court materially alters any of the
6 terms herein or fails to approve each of the terms herein. Each and every term of this agreement
7 shall be deemed material for the purposes of this termination provision. Notice of termination must
8 be provided in writing fourteen (14) days before the Settlement Date. Additionally, Defendants,
9 and each of them, shall have the right to terminate this Agreement if 1,000 or more of the Class
10 Members complete and return valid, timely requests for exclusion to the Claims Administrator.
11 Defendants, and each of them, shall have this right for fourteen (14) days after receiving notice
12 from the Claims Administrator of the number of requests for exclusion. To exercise this right,
13 Defendants, or any of them, shall provide written notice of such termination to Class Counsel and
14 the Court. If Defendants or Plaintiffs, or any one of them, timely terminates under this section, this
15 Agreement shall be of no force and effect and the Settling Parties' rights and defenses shall be
16 restored without prejudice as if this Agreement had never been executed.

17 **H. Publicity**

18 Class Counsel agrees not to issue any press release regarding this Settlement or its terms to
19 the public.

20 **I. Application For Attorneys' Fees And Expenses And Compensation For Class**
21 **Representatives**

22 Defendants shall not oppose an application by Class Counsel for Class Counsel Attorneys'
23 Fees of no more than \$3,650,000 ("Maximum Fee Amount") to cover all fees, costs and expenses of
24 Class Counsel as well as Class Representative Enhancements of up to \$5,000 per Class
25 Representative. In turn, Class Counsel shall not apply for Class Counsel Attorneys' Fees in excess
26 of the Maximum Fee Amount from the Court, and shall apply for an award of Class Counsel
27 Attorneys' Fees only from the Court pursuant to this Settlement Agreement. Class Counsel shall
28

1 not seek recovery of any Class Counsel Attorneys' Fees from any other court or tribunal.

2 Class Counsel's Attorneys' Fees and Class Representative Enhancements shall in no manner
3 reduce the amount of benefits afforded the Settlement Class under this Agreement. Class Counsel's
4 Attorneys' Fees shall cover all work performed or to be performed by Class Counsel in any way
5 related to the Action, including, but not limited to, all work performed in connection with the
6 approval of this Agreement.

7 Plaintiffs, any other member of the Settlement Class and Class Counsel agree not to make
8 any further demand for attorneys' fees, interest, costs, enhancement awards, or expenses of any
9 kind.

10 The amount of court-awarded Class Counsel's Attorneys' Fees and the Class
11 Representatives Enhancements shall be deposited into the Qualified Settlement Fund within 15
12 business days of entry by the Court of its order awarding Class Counsel's Attorneys' fees and any
13 Class Representative Enhancements. These amounts plus any accrued interest shall be paid by the
14 Claims Administrator from the Qualified Settlement Fund to Class Counsel and the Class
15 Representative no later than 5 days after the Settlement Date.

16 **IV. MISCELLANEOUS PROVISIONS**

17 **A. Exhibits**

18 The exhibits to this Agreement are an integral part of the Settlement and are expressly
19 incorporated and made a part of the Agreement.

20 **B. For Settlement Purposes Only**

21 This Agreement is for settlement purposes only. Neither the act of, nor any provision
22 contained in this Agreement, nor any action taken hereunder, shall constitute, or be construed as, an
23 admission of the validity of any claim or any fact alleged in the Action or of any wrongdoing, fault,
24 violation of law, or liability of any kind on the part of Defendants, or an admission by Defendants
25 of any claim or allegation made in any action or proceeding by or against Defendants. This
26 Agreement shall not be offered or be admissible in evidence by or against any Settling Party or cited
27 or referred to in any action or proceeding, except in an action or proceeding brought to enforce its

1 terms. Information provided by Defendants to Plaintiffs, and/or Class Counsel in connection with
2 settlement negotiations is for settlement purposes only. This Agreement is without prejudice to the
3 rights of Defendants to: (i) seek to compel arbitration of any claim in any forum, excepting claims
4 arising under this Agreement by Class Members who have not opted out; (ii) oppose Class
5 certification in this Action should this Agreement not be approved or implemented for any reason;
6 (iii) oppose certification in any other proposed or certified class action; or (iv) use the certification
7 of the Class to oppose certification of any other proposed or existing class arising out of or related
8 to the Released Claims. Similarly, information provided by Plaintiffs, and/or Class Counsel, to
9 Defendants and/or their counsel in connection with settlement negotiations is for settlement
10 purposes only. Nothing in this paragraph shall preclude Settling Parties from offering, or any court
11 from admitting into evidence and considering, this Agreement in connection with any motion to
12 stay or dismiss any action asserting a Released Claim, or a motion to enjoin any Class Member
13 from prosecuting such an action.

14 **C. No Solicitation**

15 The Parties agree that neither they nor their counsel will solicit or otherwise encourage
16 directly or indirectly Class Members to object to the Settlement, or appeal the Final Judgment.

17 **D. Entire Agreement**

18 No representations, warranties, or inducements have been made between Plaintiffs or Class
19 Counsel, on the one hand, and Defendants or their counsel, on the other, other than those
20 representations, warranties, and covenants contained in this Agreement. This Agreement and its
21 exhibits shall constitute the entire agreement of the Settling Parties and may not be modified or
22 amended, nor may any of its provisions be waived, except by a writing signed by all parties to this
23 Agreement or their successors-in-interest.

24 **E. Materiality**

25 The Settling Parties have negotiated all of the terms and conditions of this Agreement at
26 arm's-length. All terms, conditions, and exhibits in their exact form are material and necessary to
27 this Agreement and have been relied upon by the Settling Parties in entering into this Agreement.

F. Application of California Law

All terms of this Agreement and its exhibits shall be governed by and interpreted according to the laws of the State of California, without giving effect to any conflict of law principles or choice of law principles.

G. Continuing Jurisdiction

The Court shall retain continuing and exclusive jurisdiction over the parties to this Agreement, including all members of the Settlement Class, as to the Released Claims, over the administration and enforcement of this Agreement, and over the division of Class Counsel's Attorneys' Fees among Plaintiffs' counsel. In the event of a breach of this Agreement by a member of the Settlement Class, by Plaintiffs, or by Defendants, the Court may exercise all equitable powers over the breaching party or parties to enforce this Agreement and the Final Judgment without regard to the availability or adequacy of any remedy at law. Such powers include without limitation the powers of specific performance, contempt, and injunctive relief.

H. Binding On Successors

This Agreement shall be binding upon and inure to the benefit of the Settling Parties and their representatives, heirs, successors, and assigns.

I. Severability

In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect the other provisions of this Agreement should the attorneys for the Settling Parties jointly elect to proceed as if such invalid, illegal, or unenforceable provision had never been included in this Agreement.

J. Extensions

The Settling Parties may agree upon a reasonable extension of time for deadlines and dates reflected in this Agreement, without further notice to the Settlement Class (subject to Court approval as to Court dates). Notwithstanding the foregoing, the Parties agree that the time allowed for Class Members to present Claim Forms or objections is not subject to extension.

1 **K. Counterparts**

2 This Agreement may be executed in one or more counterparts. All executed counterparts
3 and each of them shall be deemed to be one and the same instrument provided that counsel for the
4 Parties to this Agreement shall exchange among themselves original signed counterparts. Facsimile
5 or pdf signatures will be accepted if the original signature is provided within seven (7) days. Any
6 executed counterpart shall be admissible in evidence to prove the existence and contents of this
7 Agreement.

8 **L. No Representations**

9 This Agreement represents the entire agreement and understanding among the Parties and
10 supersedes all prior proposals, negotiations, agreements, and understandings relating to the subject
11 matter of this Agreement. The Parties acknowledge, stipulate, and agree that no covenant,
12 obligation, condition, representation, warranty, inducement, negotiation, or understanding
13 concerning any part or all of the subject matter of this Agreement, between Plaintiffs or Class
14 Counsel, on the one hand, and Defendants, on the other, has been made or relied on except as
15 expressly set forth in this Agreement.

16 **M. Modification In Writing Only**

17 This Agreement, and any and all parts of it, may be amended, modified, changed, or waived
18 only by an express written instrument signed by all Parties or their successors-in-interest.

19 **N. Compromise**

20 This Agreement and the settlement it evidences is made in compromise of disputed claims.
21 Because this is a class action, this Agreement must receive preliminary and final approval by the
22 Court. Accordingly, Plaintiffs and Defendants enter into this Agreement on a conditional basis. In
23 the event that the Court does not execute and file the Final Judgment, or in the event that such Final
24 Judgment does not become final for any reason, or is modified in any material respect, or in the
25 event that the Settlement Date, as defined herein, does not occur, this Agreement shall be deemed
26 null and void ab initio and shall be of no force or effect whatsoever, and shall not be referred to or
27 utilized for any purpose whatsoever. Defendants deny all of Plaintiffs' claims as to liability and
28

1 damages as well as Plaintiffs' class allegations, and do not waive, but rather expressly reserve all
2 rights to challenge all such claims and allegations upon all procedural and factual grounds including
3 the assertion of any and all defenses, if the Final Judgment does not become final for any reason, or
4 in the event that the Settlement Date does not occur.

5 **O. Calculations**

6 It is understood and agreed by the Parties that the procedure for the distribution of the
7 Settlement Payments, the calculation of Settlement Amounts, and the procedure for effectuating this
8 Settlement are subject to approval by the Court. If any court: (i) requires Defendants to pay any
9 Settlement Payments to any person or entity other than an Authorized Claimant or as provided
10 herein in Section III.B.3 above; (ii) diminishes or expands the releases to be obtained by
11 Defendants; or (iii) requires any other changes in the Settlement that are materially detrimental to
12 the Settlement Class or Defendants, the Agreement shall be voidable by Class Counsel or
13 Defendants, or any of them, by written notice to Liaison Counsel for Plaintiffs and at least one of
14 the attorneys of record for each Defendant served in a manner authorized by Rule 5 of the Rules of
15 Civil Procedure, no later than fifteen (15) days after the party giving notice receives notice of entry
16 of any such order.

17 **P. Authorization**

18 Class Counsel warrant and represent that they are authorized by Plaintiffs, and the attorneys
19 of record for Defendants warrant and represent that they are authorized by Defendants, to take all
20 appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to
21 effectuate its terms, and to execute any other documents required to effectuate the terms of this
22 Agreement. The Parties and their counsel will cooperate with each other and use their best efforts
23 to effect the implementation of the Settlement. In the event the Parties are unable to reach
24 agreement on the form or content of any document needed to implement the Agreement, or on any
25 supplemental provisions that may become necessary to effectuate the terms of this Agreement, the
26 Parties agree to seek the assistance of the Court, and in all cases all such documents, supplemental
27 provisions and assistance of the Court shall be consistent with this Agreement.

Except where the context indicates otherwise, references to the Court shall also include any other courts that take jurisdiction of the Action.

The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement shall not be construed against any party on the basis that the party was the drafter or participated in the drafting.

Within thirty (30) days after the filing of the Final Judgment pursuant to this Agreement, Class Counsel shall certify to Defendants that all non-public documents (copies of any such documents or other non-public information) received from Defendants have been destroyed. No copies shall be retained of any such document.

By: Richard H. Gohari
SENIOR VICE PRESIDENT, General Counsel
VeriSign, Inc. + SECRETARY

By: _____
Fox Mobile Distribution, LLC

1 **Q. Court**

2 Except where the context indicates otherwise, references to the Court shall also include any
3 other courts that take jurisdiction of the Action.

4 **R. Drafting Of Agreement**

5 The Parties have cooperated in the drafting and preparation of this Agreement. This
6 Agreement shall not be construed against any party on the basis that the party was the drafter or
7 participated in the drafting.

8 **S. Return Of Documents**

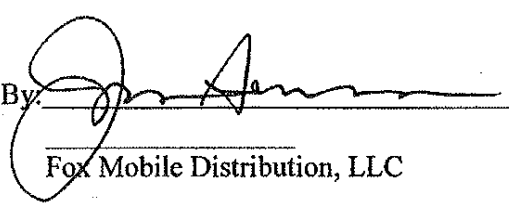
9 Within thirty (30) days after the filing of the Final Judgment pursuant to this Agreement,
10 Class Counsel shall certify to Defendants that all non-public documents (copies of any such
11 documents or other non-public information) received from Defendants have been destroyed. No
12 copies shall be retained of any such document.

13
14
15 Dated: _____, 2009

16
17 By: _____

18 VeriSign, Inc.

19 Dated: Oct. 30, 2009

20
21 By:  _____

22 Fox Mobile Distribution, LLC

1 Dated Nov. 2, 2009

2 By: Cynthia Hennessey
3 General Attorney
4 AT&T Mobility LLC; Cingular Wireless
5 LLC; AT&T Wireless Services, Inc.; and
6 New Cingular Wireless Services, Inc.

7
8
9 Dated: _____, 2009

10
11 By: _____
12 T-Mobile USA, Inc.

13
14
15
16
17
18 Dated: _____, 2009

19 ARNOLD & PORTER LLP

20
21 By: _____
22 Ronald L. Johnston
23 Attorneys for VeriSign, Inc. and Fox
24 Mobile Distribution, LLC
25
26
27
28

1 Dated: _____, 2009

2 By: _____

3 AT&T Mobility LLC; Cingular Wireless
4 LLC; AT&T Wireless Services, Inc.; and
5 New Cingular Wireless Services, Inc.

6
7
8
9 Dated: 10/2, 2009

10
11 By: *Mr. [Signature]*

12 *Sr Corporate Counsel*
13 T-Mobile USA, Inc.

14
15
16
17
18 Dated: _____, 2009

19 ARNOLD & PORTER LLP

20
21 By: _____

22 Ronald L. Johnston
23 Attorneys for VeriSign, Inc. and Fox
24 Mobile Distribution, LLC
25
26
27
28

1 Dated: _____, 2009

2 By: _____

3
4 AT&T Mobility LLC; Cingular Wireless
5 LLC; AT&T Wireless Services, Inc.; and
6 New Cingular Wireless Services, Inc.

7
8
9 Dated: _____, 2009

10
11 By: _____

12 T-Mobile USA, Inc.

13
14
15
16 Approved as to form by counsel for
17 Defendants as follows:

18
19 Dated: Nov. 3, 2009

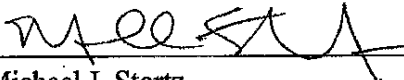
20 ARNOLD & PORTER LLP

21 By: 

22 Ronald L. Johnston
23 Attorneys for VeriSign, Inc. and Fox
24 Mobile Distribution, LLC
25
26
27
28

1 Dated: Nov. 2, 2009

DRINKER, BIDDLE & REATH LLP

2
3 By: 
4 Michael J. Stortz
5 Attorneys for AT&T Mobility LLC;
6 Cingular Wireless LLC; AT&T Wireless
7 Services, Inc.; and New Cingular Wireless
8 Services, Inc.

9 Dated: _____, 2009

DAVIS WRIGHT TREMAINE LLP

10 By: _____
11 James Grant
12 Attorneys for T-Mobile USA, Inc.

13 Dated: _____, 2009

CALLAHAN, THOMPSON, SHERMAN &
CAUDILL, LLP

14
15 By: _____
16 Robert Thompson
17 Liaison Counsel and Executive Committee
18 Member for Plaintiffs
19 Attorneys for Plaintiffs Charles Ford, Debra
20 Szalanski, Carol Fox de Stefano, David
21 Haslet, and Gerald Shuck, individually and
22 on behalf of other persons similarly situated
23 and the general public
24
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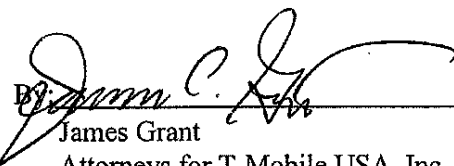
1 Dated: _____, 2009

DRINKER, BIDDLE & REATH LLP

2
3 By: _____
4 Michael J. Stortz
5 Attorneys for AT&T Mobility LLC;
6 Cingular Wireless LLC; AT&T Wireless
Services, Inc.; and New Cingular Wireless
Services, Inc.

7 Dated: 11/3, 2009

DAVIS WRIGHT TREMAINE LLP

8
9 
10 James Grant
11 Attorneys for T-Mobile USA, Inc.

12
13 Dated: _____, 2009

CALLAHAN, THOMPSON, SHERMAN &
CAUDILL, LLP

14
15
16 By: _____
17 Robert Thompson
18 Liaison Counsel and Executive Committee
19 Member for Plaintiffs
20 Attorneys for Plaintiffs Charles Ford, Debra
21 Szalanski, Carol Fox de Stefano, David
22 Haslet, and Gerald Shuck, individually and
23 on behalf of other persons similarly situated
24 and the general public
25
26
27
28

1 Dated: _____, 2009

DRINKER, BIDDLE & REATH LLP

2
3 By: _____

4 Michael J. Stortz
5 Attorneys for AT&T Mobility LLC;
6 Cingular Wireless LLC; AT&T Wireless
Services, Inc.; and New Cingular Wireless
Services, Inc.

7 Dated: _____, 2009

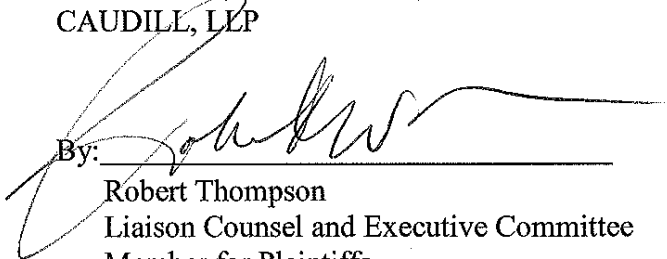
DAVIS WRIGHT TREMAINE LLP

8
9 By: _____

10 James Grant
11 Attorneys for T-Mobile USA, Inc.

12
13 Dated: 10/30, 2009

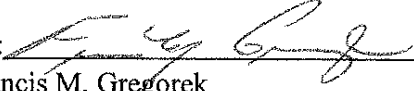
14 CALLAHAN, THOMPSON, SHERMAN &
15 CAUDILL, LLP

16 By:  _____

17 Robert Thompson
18 Liaison Counsel and Executive Committee
19 Member for Plaintiffs
20 Attorneys for Plaintiffs Charles Ford, Debra
21 Szalanski, Carol Fox de Stefano, David
22 Haslet, and Gerald Shuck, individually and
23 on behalf of other persons similarly situated
24 and the general public
25
26
27
28

1 Dated: 11/30, 2009

WOLF HALDENSTEIN ADLER
FREMAN & HERZ, LLP

2
3
4 By: 
5 Francis M. Gregorek
6 Executive Committee Member for Plaintiffs
7 Attorneys for Diane Cervantes individually and
8 on behalf of other persons similarly situated
9 and the general public

10 Dated: _____, 2009

BARRETT LAW OFFICE, P.A.

11
12 By: _____
13 Don Barrett
14 Executive Committee Member for Plaintiffs
15 Attorneys for Lloyd "Adam" Page individually a
16 on behalf of other persons similarly situated
17 and the general public

18 Dated: _____, 2009

SQUITIERI & FEARON, LLP

19 By: _____
20 Stephen J. Fearon, Jr.
21 Executive Committee Member for Plaintiffs
22 Attorneys for Eright Johnson individually and
23 on behalf of other persons similarly situated
24 and the general public

25 **Executive Committee:**

26 Francis M. Gregorek, Esq. (SBN 144785)
27 Rachele R. Rickert, Esq. (SBN 190634)
28 **WOLF HALDENSTEIN ADLER**
FREMAN & HERZ, LLP

1 Dated: _____, 2009

WOLF HALDENSTEIN ADLER
FREMAN & HERZ, LLP

4 By: _____

Francis M. Gregorek
Executive Committee Member for Plaintiffs
Attorneys for Diane Cervantes individually and
on behalf of other persons similarly situated
and the general public

9 Dated: _____, 2009

BARRETT LAW OFFICE, P.A.

12 By: _____

Don Barrett
Executive Committee Member for Plaintiffs
Attorneys for Lloyd "Adam" Page individually a
on behalf of other persons similarly situated
and the general public

17 Dated: Oct. 30, 2009

SQUITIERI & FEARON, LLP

19 By: Stephen J. Fearon, Jr.

Stephen J. Fearon, Jr.
Executive Committee Member for Plaintiffs
Attorneys for Eright Johnson individually and
on behalf of other persons similarly situated
and the general public

25 **Executive Committee:**

26 Francis M. Gregorek, Esq. (SBN 144785)
27 Rachele R. Rickert, Esq. (SBN 190634)
28 **WOLF HALDENSTEIN ADLER**
FREMAN & HERZ, LLP

1 Symphony Towers
2 750 B Street, Suite 2770
3 San Diego, CA 92101
4 Telephone: (619) 239-4599
5 Facsimile: (619) 234-4599

6 Don Barrett, Esq.
7 **BARRETT LAW OFFICE, P.A.**
8 404 Court Square North
9 P.O. Box 987
10 Lexington, MS 39095
11 Telephone: (662) 834-2376
12 Facsimile: (662) 834-2628

13 Stephen J. Fearon, Jr., Esq.
14 **SQUITIERI & FEARON, LLP**
15 32 East 57th Street
16 New York, NY 10022
17 Telephone: (212) 421-6492
18 Facsimile: (212) 421-6553

19 Robert W. Thompson, Esq (SBN 106411)
20 Kathleen Hartman, Esq. (SBN 219934)
21 **CALLAHAN, THOMPSON, SHERMAN**
22 **& CAUDILL, LLP**
23 12601 Main Street, Suite 800
24 Irvine, CA 92614
25 Telephone: (949) 261-CTSC (2872)
26 Facsimile: (949) 261-6060

27 **Additional Counsel:**

28 Charles Barrett, Esq.
BARRETT & ASSOCIATES, P.A.
6518 Highway 100
Suite 210
Nashville, TN 37205
Telephone: (615) 515-3393
Facsimile: (615) 515-3395

Thomas P. Thrash, Esq.
THRASH LAW FIRM
1101 Garland Street
Little Rock, AR, 72201
Telephone: (501) 374-1058
Facsimile: (501) 375-3141

DeWitt M. Lovelace, Esq.
Alex Peet, Esq.
LOVELACE LAW FIRM, P.A.
12870 US Hwy 98 West
Suite 200

Destin, FL 32550
Telephone: (850) 837-6020
Facsimile: (850) 837-4093

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EXHIBIT A

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA

If You Paid for Unauthorized Jamster Mobile Content
(such as Ringtones,
Games, or Graphics) on Your Wireless Telephone Bill

You May Receive a Refund From a Class Action Lawsuit

*This Notice is being provided by Order of the U.S. District Court.
It is not a solicitation from a lawyer. You are not being sued.*

- A Settlement has been proposed in several lawsuits concerning unauthorized charges related to the sale, marketing and billing of mobile content from Jamster to wireless telephone subscribers. The lawsuit, *In re: Jamster Marketing Litigation*, MDL No. 1751, No. 05-cv-0819-JM (CAB), is pending in the U.S. District Court for the Southern District of California.
- Plaintiffs allege that Jamster advertised on television and on the Internet that customers could receive a free ringtone, or purchase a single ringtone, but that customers were in fact subscribed to a plan with recurring charges without their knowledge or consent when they sought to acquire the ringtones.
- The Settlement provides refunds to customers and settles the lawsuit.

A Summary of Your Rights and Choices:

*Your Legal Rights Are Affected Even If You Do Not Act.
Read This Notice Carefully.*

You May:	Brief Explanation:	Due Date:
Do Nothing	You are automatically part of the Class Action if you fit the Class description below. However, if you do not file a claim, you will not receive a refund from the Settlement. See Question 7	<u>N/A</u>
File a Claim	Submit a Claim Form This is the only way you will receive any payment from the Settlement. See Question 9	<i>Insert Date</i>
Exclude Yourself (Opt Out)	Get out of the Settlement You may exclude yourself from the Settlement and keep your right to sue at your own expense. If you do so, you will not receive any payment from the Settlement. See Questions 11	<i>Insert Date</i>
Object to the Settlement	Object or comment on the Settlement. If you do not exclude yourself, you may object to or comment on the Settlement at a hearing to determine whether the Court should approve the Settlement as fair to the Class. The Court has appointed lawyers to represent the Class. See Question 13	<i>Insert Date</i>

**THESE RIGHTS AND OPTIONS
– AND THE DEADLINES TO EXERCISE THEM –
ARE EXPLAINED IN THIS NOTICE.**

Basic Information

1. What Is This Notice About?

Plaintiffs filed multiple class actions that were coordinated for pretrial proceedings in the United States District Court for the Southern District of California alleging that Jamster advertised on television and on the Internet that customers could receive a free ringtone, or purchase a single ringtone, but that customers were in fact subscribed to a plan with recurring charges without their knowledge or consent when they sought to acquire the ringtones.

This Notice explains:

- What the Class Action and the Settlement are about.
- Who is affected by the Settlement.
- Who represents you and the Class in this lawsuit.
- What your legal rights and choices are.
- How and by when you need to act.

2. What Is Mobile Content And Jamster?

Mobile content is a product (such as ringtones, games, graphics, news or other alerts) that you can purchase and download to your wireless device. Jamster is a company that markets and sells mobile content. Jamster customers are invoiced for purchases on their wireless telephone bills from providers such as Alltel, AT&T, Boost, Cincinnati Bell, Dobson, Nextel, Sprint, T-Mobile, Verizon, or Virgin.

3. What Is The Litigation About?

Plaintiffs allege that Jamster advertised on television and on the Internet that customers could receive a free ringtone, or purchase a single ringtone, but that customers were in fact subscribed to a plan with recurring charges without their knowledge or consent when they sought to acquire the ringtones. Plaintiffs have also sued two mobile telephone carriers, defendants AT&T (formerly known as Cingular Wireless) and T-Mobile. The claims against AT&T and T-Mobile include, among others, allegations that these defendants failed to verify that Jamster mobile content charges were authorized by customers and failed to adequately describe such charges on customers' bills.

By settling this lawsuit, the Defendants are not admitting that they are liable to the Settlement Class. They are settling to avoid the burden and costs of continued litigation.

The Settlement requires that Jamster implement, if not already in place, certain advertising disclosures and service practices. The Settlement will also provide money to Class Members. For complete details on what the Settlement provides, see Question 6.

4. Who Is A Member Of The Class?

You are a member of the Class if you fit the definition below:

All persons in the United States who, at any time from March 8, 2001 to [the date of Preliminary Approval], were subscribed to or have paid for a Jamster mobile content service plan or Jamster services or content.

Excluded from the class are the following: the Defendants, the Claims Administrator, the Mediator, the Released Parties, and any of the respective parents, subsidiaries, affiliates, or control persons of the Released Parties, as well as the officers, directors,

agents, servants, or employees of the Released Parties, and any trial judge presiding over this case or any of the actions which comprise this MDL.

Benefits You Get From the Settlement

5. What Does The Proposed Settlement Provide?

Jamster Advertising Disclosures and Service Practices.

Jamster will provide disclosures regarding mobile content subscriptions in its advertisements and on its website. In addition, Jamster will continue providing systems, processes, and training to support its customers having the ability to immediately address billing issues and cancel mobile content subscriptions.

Money For Settlement Class Members Filing Claims.

Jamster agreed to refund the amount of unauthorized subscription charges paid by eligible Class Members. They will refund up to a maximum amount of three monthly subscription charges per wireless telephone line that was billed for unauthorized charges, subject to the following limitations:

Subscription Charge Refund. Jamster will refund any customer who submits a valid Claim Form on time for the amount they were billed for unauthorized charges for Jamster mobile content. The refund will be capped at an amount equal to three monthly subscription charges. This cap will be per each wireless telephone line.

A customer submitting a Claim Form for one telephone line will receive up to an amount equal to three monthly subscription charges. However, a customer submitting a Claim Form for multiple telephone lines will receive up to an amount equal to three monthly subscription charges for each telephone line.

Refunds will be a cash payment via first-class mail. In order to receive a refund, you must submit a valid Claim Form online or postmarked by **[Insert Date]**. For complete details on filing a claim, see Question 9.

To be eligible for any refund, the charges you paid must have been unauthorized and not previously refunded to your account. If you previously received a refund, you are not eligible to receive a second refund for the same charges.

Remain In The Settlement And File A Claim

6. What Happens If I Do Nothing?

If you do nothing, you will automatically be considered part of the Class. However, you must submit a valid Claim Form online, postmarked, faxed, or hand delivered by **[Insert Date]** to the Claims Administrator to receive a refund from the Settlement.

If you do not want to be included in the Settlement, see Question 10 for details on how to exclude yourself.

7. If I Remain In The Class, What Claims Am I Settling?

By staying in the Settlement Class, all of the Court's orders will apply to you, and you will give Defendants and all Released Parties (as further defined in the Settlement Agreement) a "release" for claims arising from or relating to the Jamster mobile content for which you have been billed from March 8, 2001 through _____, 2009. A release means you cannot sue or be part of any other lawsuit against the Released Parties about the claims or issues in this lawsuit. To read the full release, see the Settlement Agreement.

8. How Do I File A Claim For Refund?

In order to receive any refund, you must submit a valid Claim Form to the Claims Administrator. Claims can be submitted online or in writing. Claim Forms are available for submission or download at www.JamsterMarketingLitigation.com.

If you do not have access to the Internet, you may obtain a Claim Form by contacting the Claims Administrator at the toll-free number (____) ____-____. You must then mail, fax, or hand deliver a completed paper Claim Form to the Claims Administrator:

Mail to: Jamster Marketing Litigation
c/o Rust Consulting, Inc.
Address
City, State Zip Code

Fax to: (000) 000-0000

If you file online or submit a paper claim, you must submit your Claim postmarked, faxed, or hand-delivered to the Claims Administrator by **[Insert Date]**. Your claim will be rejected if it is not received by this date. Follow the steps below to make a claim for a Subscription Charge Refund.

Step 1 – Complete a Claim Form

You must complete all information requested in the Claim Form. The following information must be provided:

- (1) List the name of the person that appears on the wireless provider bill who was billed the charge.
- (2) Provide an address to mail the Settlement refund check to.
- (3) Provide the wireless phone number associated with the unauthorized Jamster charges,
- (4) Check the box for the amount you believe you were charged for the subscription, and check the box indicating how many months you estimate the charge occurred.
- (5) Sign the Claim Form and verify under oath that (a) the charges you are seeking payment for were unauthorized and (b) the information provided in the Claim Form is accurate.

Claim Forms that are incomplete or are not signed will be rejected.

Step 2 – Submit Your Claim Form to the Claims Administrator

The completed Claim Form must be submitted online, postmarked, faxed or hand-delivered to the Claims Administrator by _____ **(Date)** in order to be eligible to receive the Subscription Charge Refund.

9. What Happens After A Claim Form Is Filed?

The Claims Administrator will review your Claim Form to determine whether you have eligible charges and are entitled to a refund as a member of the Settlement Class.

- (1) *Claim Approved:* If the Court approves the Settlement and your claim is approved, the Claims Administrator will mail you a cash refund check via first-class mail.
- (2) *Claim Denied, Reduced, or Challenged:* You will be notified if your claim is: (a) rejected by the Claims Administrator, (b) reduced because it exceeds the amount paid in Jamster-related charges, or (c) challenged by Defendants. If your claim is initially denied, you will have the opportunity to appeal this decision by submitting documents showing you were charged for unauthorized Jamster mobile content. A full explanation of this process is set out in the Settlement Agreement.

Exclude Yourself From The Class ("Opt Out " Of The Settlement)

10. What If I Don't Want To Be In The Class?

If you do not wish to be a member of the Settlement Class, you may exclude yourself by writing to the Claims Administrator.

Your Request for Exclusion *must* be postmarked, faxed, or hand-delivered no later than _____, 2010.

11. How Do I Exclude Myself From The Class?

You can exclude yourself from the Class by sending a written "Request for Exclusion" to the Claims Administrator so that it is postmarked, faxed, or hand-delivered no later than _____, 2010. Your written request must:

- (1) Include your full name and address.
- (2) State that you want to opt out of the Jamster Marketing Litigation Settlement.
- (3) Be signed by you.
- (4) Delivered by mail, fax, hand, or overnight delivery service to the Claims Administrator at:
Jamster Mobile Content Litigation
c/o Claims Administrator
Addresss
City, State Zip Code

Object To The Settlement

12. May I Object To The Settlement?

Yes. If you are a member of the Class, and you have not requested to opt out of the Settlement, you or your counsel have the right to appear before the Court and object to the Settlement. You may object to any aspect of the Settlement, the fairness or adequacy of Class Counsel's representation, or the requests for attorneys' fees and expenses.

13. How Do I Object To The Settlement?

To object to the Settlement, you (or your lawyer if you have one) must file a Notice of Intention to Appear and Object by _____, 2010. You must follow the instructions below to file an objection:

- (1) Provide your full name and address.
- (2) Provide the case name and number, all arguments, citations, and evidence supporting your objection.
- (3) Specify who, if anyone, will attend the hearing to speak for your objection.
- (4) Deliver your objection by mail, hand, or overnight delivery service to:

Robert W. Thompson,
Callahan, Thompson, Sherman, & Caudill, LLP,
2601 Main Street, Suite 800, Irvine, California 92614

and

Ronald L. Johnston, Arnold & Porter LLP,
777 S. Figueroa Street, 44th Floor,
Los Angeles, California, 90017

- (5) File a copy of your objection with the Clerk of Court:

United States District Court for the Southern District of California
940 Front Street
San Diego, California 92101

All objections will be considered at the Fairness Hearing held on _____, 2010. For more details on the Fairness Hearing, see Question 20.

The Lawyers Representing You

14. Do I Have A Lawyer Representing My Interests In This Class Action?

Yes. The Court has approved the following team of attorneys to represent the Settlement Class. These lawyers are called "Class Counsel". You will not be charged for these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

The following law firms represent the Class:

Robert W. Thompson, Esq.
Callahan, Thompson, Sherman
& Caudill, LLP
2601 Main Street, Suite 800
Irvine, CA 92614
Tel (949) 261-2872
Fax (949) 261-6060

Francis M. Gregorek
Wolf Haldenstein Adler Freeman
& Herz LLP
Symphony Towers
750 B Street, Suite 2770
San Diego, CA 92101
Tel: (619) 239-4599
Fax: (619) 234-4599

Stephen J. Fearon, Jr., Esq.
Squitieri & Fearon, LLP
32 East 57th Street
New York, NY 10022
Tel (212) 421-6492
Fax (212) 421-6553

Don Barrett, Esq.
Barrett Law Office, P.A.
404 Court Square North
P.O. Box 987
Lexington, MS 39095
Tel: (662) 834-2376
Fax: (662) 834-2628

15. What Is Class Counsel's Opinion Of The Settlement?

The Court approved and appointed lawyers who have knowledge of the facts and legal claims related to this litigation and any defenses that might be asserted against those claims. Class Counsel has also engaged in litigation related to this lawsuit, including defending an appeal to the United States Supreme Court and two appeals. Class Counsel participated in mediation before Justice Howard Wiener (Ret.), who in his capacity as neutral mediator expressed his views about the case and the Settlement. Based on their investigation and this process, Class Counsel believe that the Settlement is fair, reasonable and adequate and in the best interests of the Settlement Class.

Class Counsel and Plaintiffs also recognize the expense and length of continued proceedings necessary to continue to prosecute this case through verdict, judgment and appeals. They have taken into account the uncertainty and the risk of the outcome of continued litigation, especially in complex actions such as these as well as the difficulties and delays inherent in such actions.

16. How Will The Lawyers Be Compensated?

Class Counsel will request approval from the Court for attorneys' fees and costs of up to \$3.65 million. This amount represents payment for the significant amount of time and costs Class Counsel expended in litigating this Action over the last four years, as well as payment for the benefits obtained for the Settlement Class through this litigation. If approved by the Court, this amount will be paid directly by Defendants to Class Counsel and will not reduce the benefit to you from the Settlement.

17. What is the Award to the Class Representatives?

The Court has appointed Charles Ford, Debra Szalanski, Carol Fox de Stefano, David Haslet, Gerald Shuck, Lloyd "Adam" Page, Eright Johnson, and Diane Cervantes as Class Representatives. Each Class Representative will receive \$5,000 for their service. If approved by the Court, this amount will be paid directly by Defendants to the Class Representatives and will not reduce the benefit to you from the Settlement.

18. Who Is Paying the Costs Associated with the Settlement?

Costs associated with the notice and administration of this Settlement will be paid by Defendants and will not reduce the benefit to you from the Settlement.

The Fairness Hearing

19. When Will The Court Determine The Fairness Of The Settlement?

The Court will hold a Fairness Hearing on _____, 2010 at __: __ X.M., at in Courtroom 15, United States District Court, Southern District of California, located at 940 Front Street, San Diego, California 92101.

The purpose of the Fairness Hearing is to:

- Decide if the Settlement is fair, reasonable and adequate and in the best interests of the Class, if it should be approved, and if a judgment should be entered;
- Decide if the Class has been fairly and adequately represented by the plaintiffs who brought the Class Action and by Class Counsel, who have represented the plaintiffs in the Class Action;
- Consider Class Counsel's requests for award of attorneys' fees and reimbursement of expenses;
- Consider requests for incentive awards for the Class Representatives;
- Consider all comments or objections; and
- Consider any other issues the Court thinks are necessary.

20. Must I Attend The Fairness Hearing?

No. Attendance is not required. Class Members who filed and served a written objection may appear at the Fairness Hearing, in person or through an attorney hired at their own expense.

21. What Happens If the Settlement Is Not Approved?

If the Settlement is not approved, the case will proceed as if a Settlement had not been attempted. There is no assurance that if the Settlement is not approved, the Settlement Class will recover more than what is provided in the Settlement or anything at all.

Get More Information

22. Where Can I Obtain More Information?

This Notice contains a summary of relevant Court papers. You may read the Settlement Agreement by downloading it from the Settlement website or you can request a copy from the Claims Administrator.

Any questions you may have concerning this Notice should be directed to Class Counsel at the addresses listed in Question 14, or you can obtain additional information by:

- Visiting the Jamster Marketing Litigation website at www.JamsterMarketingLitigation.com
- Calling the Claims Administrator, toll free: 1-800-000-0000
- Writing to:
Jamster Marketing Litigation
c/o Rust Consulting, Inc.
P.O. Box xxxx
City, State xxxxx
- Emailing: info@xxxxxxxx.com
- You may also contact Class Counsel at:

Robert W. Thompson or Kathleen Hartman
Callahan, Thompson, Sherman & Caudill, LLP
2601 Main Street, Suite 800
Irvine, California 92614
(800) 611-3331

Please include the case name and number, and your name and your current return address on any letters, not just the envelopes.

Please do not contact the Court Clerk or the Defendants' Attorneys. They are not in a position to give you any advice about this Settlement.

EXHIBIT B

JAMSTER MARKETING LITIGATION CLAIM FORM

Return this Claim Form to: _____.
Questions? Call _____.

Claims Forms *must* be submitted online, postmarked, received by facsimile, or hand delivered by _____ – please call _____ or visit www.JamsterMarketingLitigation.com for specific deadline information and updates.

PART A – CLAIMANT INFORMATION

Name of the Person who is the Account Holder on the Wireless Phone Bill:

(First) (Middle) (Last)

Address:

(Street)

(City) (State) (Zip Code)

Daytime Phone Number: (_____) _____ - _____ (not required)

Email Address: _____ (not required)

PART B – CERTIFICATION UNDER PENALTY OF PERJURY

If you were charged for unauthorized Jamster mobile content on your wireless bill, you must sign below and complete Part C. **FAILURE TO COMPLETELY FILL OUT THIS CLAIM FORM MAY RESULT IN A REJECTION OF YOUR CLAIM. THE CLAIMS ADMINISTRATOR MAY CONTACT YOU TO REQUEST DOCUMENTATION TO PROCESS YOUR CLAIM.** Claims may be audited, and you are submitting this claim under oath.

I declare under penalty of perjury under the laws of the United States that the following is true and correct: (1) that between March 8, 2001 and _____, 2009, I incurred charges for Jamster mobile services and/or content on the wireless telephone line(s) and for the duration(s) listed below; (2) I did not authorize the purchases for Jamster mobile services and/or content to incur these charges; (3) I have not previously received a full refund for these charges; and (4) that all of the information on this form is true and correct.

Executed in: _____,
City State

Signature: _____ Date: _____

Print Name: _____

PART C – ELIGIBLE MOBILE CONTENT CHARGES

List each of wireless telephone line on your account for which you incurred eligible* charges and check the appropriate boxes for the amount and duration [up to three months] of such charges. While you are not required to do so, if you wish to further explain any of the listed charges, please do so on a separately attached page as well.

The wireless phone number(s) listed must be lines of service on the account held by the person listed in Part A above or your claim may be rejected. You must be the wireless account holder to submit a claim. If you had different wireless accounts for which you incurred eligible charges and you wish to make a claim for those charges, you may submit a separate claim form.

** Eligible charges include any charge incurred between March 8, 2001 and _____, 2009 for Jamster mobile content (i.e. ringtones, wallpapers, etc.) that was **not authorized**. Refunds were available and given to some customers during this period. Any refund that you receive under this settlement may be reduced so that you are not refunded more than you actually paid for unauthorized Jamster mobile content. See www.JamsterMarketingLitigation.com or call _____ for more information.*

1. Wireless Phone Number: (_____) _____ - _____
 Amount of recurring unauthorized charges: ☐ \$1.99 per week
☐ \$5.99 per month
☐ \$9.99 per month

 Duration of unauthorized charge(s): ☐ 1-month
☐ 2-months
☐ 3-months

2. Wireless Phone Number: (_____) _____ - _____
 Amount of recurring unauthorized charges: ☐ \$1.99 per week
☐ \$5.99 per month
☐ \$9.99 per month

 Duration of unauthorized charge(s): ☐ 1-month
☐ 2-months
☐ 3-months

3. Wireless Phone Number: (_____) _____ - _____
 Amount of unauthorized recurring charges: ☐ \$1.99 per week
☐ \$5.99 per month
☐ \$9.99 per month

 Duration of unauthorized charge(s): ☐ 1-month
☐ 2-months
☐ 3-months

EXHIBIT C

THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

In re:

MDL No. 1751

JAMSTER MARKETING LITIGATION

Master File No. 05-cv-0819-JM
(CAB)

This Document Relates To All Cases

**ORDER GRANTING
PRELIMINARY APPROVAL OF
SETTLEMENT AND
CERTIFICATION OF
SETTLEMENT CLASS,
DIRECTING NOTICE TO THE
CLASS, AND SCHEDULING
FAIRNESS HEARING**

1 On _____, 2009, counsel for the parties appeared before the Court for oral
2 argument on Plaintiffs' Motion for Preliminary Approval of Class Action Settlement (the
3 "Motion"). After having reviewed the record of the case, the Motion, and the representations of
4 counsel, the Court finds as follows:

5 1. This Court has personal jurisdiction over the proposed Settlement Class and subject
6 matter jurisdiction over this action.

7 2. The Court finds that: (a) the proposed settlement as set forth in the parties'
8 Stipulation and Settlement Agreement attached as Exhibit A to the Motion (the "Proposed
9 Settlement") resulted from arm's length negotiations; (b) the Proposed Settlement is within the
10 range of possible recovery; (c) the litigation of this case, if it did not settle, would likely be
11 complex, expensive, and lengthy; (d) the case has been the subject of lengthy motion practice and
12 multiple appeals; and (e) the amount and substance of objections to the Proposed Settlement are not
13 likely to be significant in light of the estimated size of the class and the terms of the settlement.
14 Therefore, the Court finds that the Proposed Settlement warrants: (i) preliminary certification of the
15 settlement class (as set forth in Paragraph 4 below); (ii) dissemination of notice to the class of the
16 Proposed Settlement (as set forth in Paragraph 10 below); and (iii) the scheduling of a hearing for
17 final approval of the Proposed Settlement.

18 3. The Court grants preliminary approval of the Proposed Settlement and finds the
19 requirements of Rule 23 of the Federal Rules of Civil Procedure for maintenance of this action as a
20 class action have been satisfied in all respects.

21 4. Based upon the Motion, as well as the prior proceedings in this MultiDistrict
22 Litigation, the Court finds that the proposed settlement class is so numerous that joinder is
23 impracticable, there are questions of law and fact common to the class, the claims of the
24 representative parties are typical of the claims of the class, the representative parties and Class
25 Counsel will fairly and adequately protect the interests of the class, and that the questions of law
26 and fact common to the class predominate over the individual questions making a class action the
27 superior method for the adjudication of the controversy. The following class is hereby certified for
28 purposes of the Proposed Settlement (the "Settlement Class"):

1 All persons in the United States who, at any time from March 8, 2001 to the date
2 of this Order ,were subscribed to or have paid for a Jamster mobile content
3 service plan or Jamster services or content. Excluded from the class are the
4 following: the Defendants, the Claims Administrator, the Mediator, the Released
5 Parties, and any of the respective parents, subsidiaries, affiliates, or control
6 persons of the Released Parties, as well as the officers, directors, agents, servants,
7 or employees of the Released Parties, and any trial judge presiding over this case
8 or any of the actions which comprise this MDL.

9 5. The Court finds that the Settlement Class as defined above and the Released Claims
10 as defined by Section III.F.2 of the Stipulation and Settlement Agreement are consistent with the
11 scope of the claims encompassed in this Action, as provided in the Court's Order of September 29,
12 2008, including all consumer claims relating to the marketing, advertising, selling or billing of
13 mobile content or services offered by Jamster (the "Jamster MDL Claims"). Accordingly, AT&T
14 may proceed with the settlement in *McFerren v. AT&T Mobility*, pending in Fulton County, Georgia
15 state court, subject to exclusion of the *Jamster* MDL Claims from that settlement.

16 6. The Court has reviewed the form, content, and manner of notice proposed by the
17 Parties, including the long form notice, publication notice, and bill insert notice proposed by the
18 Parties, attached hereto as Exhibits A, B, and C. The Court finds that the proposed form and
19 content of the notices and the manner of providing notice to the Settlement Class as outlined in the
20 Settlement Agreement and the Motion is the best notice that is reasonably practicable under the
21 circumstances, including, but not limited to, the size of the Settlement Class, to apprise such
22 members: (i) of the pendency of this action; (ii) of their right to exclude themselves from the
23 proposed settlement; (iii) that any member of the Settlement Class that does not exclude himself or
24 herself from the Proposed Settlement may object to the settlement; (iv) that any member of the
25 Settlement Class may appear at the hearing on Final Approval of the Settlement; and (v) that any
26 judgment will include all members of the Settlement Class who do not request exclusion from the
27 Proposed Settlement. The Parties may alter the format (*i.e.*, size, font, etc.) of the notices to
28

1 conform to the requirements of AT&T and T-Mobile's bills and to the requirements of the various
2 publications used to give notice.

3 7. In light of the foregoing, the Court concludes that the terms of the Proposed
4 Settlement are fair, reasonable, and adequate so as to warrant this Court's preliminary approval of
5 the Proposed Settlement and form of notice.

6 8. The Court finds that Charles Ford, Debra Szalanski, Carol Fox de Stefano, David
7 Haslet, Gerald Shuck, Lloyd "Adam" Page, Eright Johnson, and Diane Cervantes will adequately
8 represent the interests of the Settlement Class, and are hereby designated as class representatives for
9 the Settlement Class.

10 9. The Court finds that Class Counsel, who are experienced and competent, will fairly
11 and adequately represent the Settlement Class and are hereby appointed to represent the Settlement
12 Class:

13 **Class Counsel Executive Committee:**

14 Robert W. Thompson, Esq.
15 Callahan, Thompson, Sherman
& Caudill, LLP
16 2601 Main Street, Suite 800
Irvine, CA 92614
17 Tel (949) 261-2872
18 Fax (949) 261-6060

19 Francis M. Gregorek
20 Wolf Haldenstein Adler Freeman
& Herz LLP
21 Symphony Towers
750 B Street, Suite 2770
22 San Diego, CA 92101
Tel: (619) 239-4599
23 Fax: (619) 234-4599

24 Stephen J. Fearon, Jr., Esq.
25 Squitieri & Fearon, LLP
32 East 57th Street
New York, NY 10022
26 Tel (212) 421-6492
Fax (212) 421-6553

27 Don Barrett, Esq.
28 Barrett Law Office, P.A.
404 Court Square North

1 P.O. Box 987
Lexington, MS 39095
2 Tel: (662) 834-2376
Fax: (662) 834-2628

3 10. Subject to the conditions of the Settlement Agreement, Rust Consulting Inc. is
4 appointed to act as Claims Administrator.

5 11. Defendants will cause notice in the forms attached as Exhibits A, B, and C
6 respectively, to be disseminated upon entry of this order as follows: (i) to be posted on the Internet
7 at www.JamsterMarketingLitigation.com within 30 days of this Order; (ii) by publication as set
8 forth in the Settlement Agreement at Section III.C.2.(a) within 120 days of entry of this Order, and
9 (iii) directly by mail to all current customers of defendants AT&T and T-Mobile with their next
10 billing statement within 120 days after entry of this Order, as set forth in Section III.C.2.(b) of the
11 Settlement Agreement .

12 12. Any request to be excluded from the Settlement Class (i.e., to opt out) must be
13 mailed on or before 165 days after entry of this Order, to the Claims Administrator at its designated
14 address.

15 13. Any objections or comments to the proposed Settlement Agreement must be mailed
16 on or before 165 days after entry of this Order, to Robert W. Thompson, Callahan, Thompson,
17 Sherman, & Caudill, LLP, 2601 Main Street, Suite 800, Irvine, California 92614, and to Ronald L.
18 Johnston, Arnold & Porter LLP, 777 S. Figueroa Street, 44th Floor, Los Angeles, California, 90017,
19 and file a copy with the Clerk of Court at:

20 Clerk of the Court
United States District Court
21 Southern District of California
880 Front Street, Room 4290
22 San Diego, CA 92101-8900

23 14. A final approval hearing will be held on _____, 2010, at __:__.m. in
24 Courtroom 15, United States District Court, Southern District of California, located at 940 Front
25 Street, San Diego, California 92101. At that time, the Court will determine: (i) whether the action
26 shall be finally certified as a class action for settlement purposes; (ii) whether the settlement should
27 be finally approved as fair, reasonable, and adequate; (iii) whether final judgment should be entered
28 in this action; (iv) whether members of the Settlement Class are bound by the release in the

1 Settlement Agreement; and (v) whether the application of Class Counsel for an award of attorneys'
2 fees and expenses and compensation to the Class Representatives should be approved. The parties'
3 motion in support of final approval must be filed with the Court on or before _____, 2010.

4 15. Any member of the Settlement Class who wishes to receive a settlement benefit
5 under the Proposed Settlement must submit a timely claim form. Claim forms must be submitted
6 online or postmarked by 180 days after entry of this Order.

7 Dated: _____
8
9

JUDGE OF THE DISTRICT COURT
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EXHIBIT D

1 This matter came before the Court for hearing on _____, 2010, pursuant to the Order
2 Granting Preliminary Approval of Settlement and Certification of Settlement Class, Directing
3 Notice to the Class, and Scheduling Fairness Hearing, dated _____, 2009 (the "Preliminary
4 Approval Order"), on application for approval of the proposed Settlement set forth in the Stipulation
5 and Settlement Agreement dated _____, 2009 ("Settlement Agreement").

6 Pursuant to the Preliminary Approval Order, Notice was given to the Class. The Notice
7 advised Class Members of the opportunity to object to the Settlement Agreement and the Settlement
8 and/or Class Counsel's request for an award of attorneys' fees and costs and Class Representative
9 enhancements, and of the opportunity for Class Members to exclude themselves from the Class. No
10 objections were received by the Court or Counsel. On _____, 2010, Class Counsel filed its
11 motion for final approval of class action settlement and supporting papers, as well as its motion for
12 an award of attorneys' fees and costs. Defendants do not oppose either motion.

13 Having read and fully considered the terms of the Settlement Agreement, the Motion for
14 Final Approval and the Motion for an Award of Attorneys' Fees and Costs, as well as oral argument
15 and all other documents on file in this matter, the Court finds that the Settlement is fair, reasonable,
16 and adequate.

17 IT IS THEREFORE ORDERED, ADJUDGED AND DECREED THAT:

18 1. Definitions. The Court, for purposes of this Order, adopts the definitions set forth in
19 the Settlement Agreement. In particular, the Court adopts the definition of "Class" and "Class
20 Members" set forth in the Settlement Agreement, as follows:

21 All persons in the United States who, at any time from March 8, 2001 to the [date
22 of Preliminary Approval Order] were subscribed to or have paid for a Jamster
23 mobile content service plan or Jamster services or content. Excluded from the
24 class are the following: the Defendants, the Claims Administrator, the Mediator,
25 the Released Parties, and any of the respective parents, subsidiaries, affiliates, or
26 control persons of the Released Parties, as well as the officers, directors, agents,
27 servants, or employees of the Released Parties, and any trial judge presiding over
28 this case or any of the actions which comprise this MDL.

Pursuant to Federal Rule of Civil Procedure 23(c)(3), this Judgment is binding on all such Class Members who have not timely requested exclusion, and whom the Court finds to be Class Members.

2. Jurisdiction. The Court has personal jurisdiction over all Class Members, except for those who have timely opted out of the Class, and has subject matter jurisdiction over this Action, including, without limitation, jurisdiction to (1) approve the Settlement Agreement, (2) issue an award of attorneys' fees and costs to Class Counsel and enhancement awards to the Class Representatives; (3) enter a permanent injunction against Jamster as provided for in the Settlement Agreement; and (4) dismiss the Action with Prejudice.

3. Approval of Settlement. The Settlement is, after hearing, determined to be fair, reasonable, and in the best interests of the class. It is, therefore, approved. With respect to the determination that the Settlement Agreement is fair, reasonable and adequate, the Court specifically notes that the outcome of a trial on the merits was by no means certain, this Action involved highly complex factual and legal issues, the Settlement Agreement was reached with the participation of a highly-respected mediator and retired appellate justice, and the monetary and non-monetary terms of the Settlement reflect substantial benefits. Pursuant to the Final Judgment, to be entered pursuant to this Order, this action will be dismissed with prejudice, each side to bear its own costs, except as set forth herein. It is further ordered that each and every term, provision, condition, and agreement of the Settlement Agreement are adopted, incorporated and made part of this Order and Judgment, and shall be effective, implemented, and enforced as provided in the Settlement Agreement.

4. Notice. Based on the Motion for Final Approval, the Court finds that the distribution of the Notice and Claim Form were materially implemented to all Class Members in accordance with Federal Rule of Civil Procedure 23(c)(2)(B), with the terms of the Settlement Agreement and the Preliminary Approval Order.

5. Award of Fees and Expenses. Based on the materials submitted by Class Counsel in support of the motion for an award of attorneys fees and costs, which is unopposed by Defendants, Class Counsel is awarded \$_____ as compensation and \$_____ as reimbursement for expenses.

1 6. Class Representatives Enhancements. Based on the Motion for Final Approval in
2 support of enhancement payments to the Class Representatives, which is unopposed by Defendants,
3 each Class Representative is awarded \$____.

4 7. Administration and Distribution of Settlement Monies. The settlement monies shall
5 be distributed to class members 30 days after the Settlement Date, as defined in the Settlement
6 Agreement. As provided for in the Settlement Agreement, any settlement checks issued to Class
7 Members who submit timely and valid claims shall be valid for 120 days, and the Qualified
8 Settlement Fund shall close when no outstanding checks remain valid. Any funds remaining after
9 distribution has been completed shall be refunded to Jamster.

10 8. Reserved Jurisdiction of Court. The Court retains jurisdiction over the settlement of
11 this case and may enter additional orders to effectuate the fair and orderly administration of the
12 settlement as may from time to time be appropriate.

13 9. Dismissal of Action. The Court dismisses on the merits and with prejudice the First
14 Amended Coordinated Class Action Complaint and the Released Claims as defined in the
15 Settlement Agreement as to all Class Members. Only the Persons identified in Exhibit A hereto
16 requested exclusion from the Class as of the deadline for opting out. These Persons so identified
17 shall not share in the benefits of the Settlement as provided in the Settlement Agreement.

18 10. Releases. Upon the Settlement Date, the Class Representatives and each Class
19 Member shall be deemed to have, and by operation of this Final Order and Judgment shall have,
20 fully, finally, and forever settled, released, and discharged the "Released Parties" from the
21 "Released Claims" as defined and more fully set forth in section III.F of the Settlement Agreement.

22 11. Permanent Injunction. All members of the Class who did not duly request exclusion
23 from the Class in the time and manner provided in the Notice of Proposed Settlement and Proposed
24 Hearing Date for Court Approval are permanently enjoined, and restrained from commencing or
25 prosecuting any action, suit, proceeding, claim or cause of action in any jurisdiction or court against
26 Defendants or any of the other entities or persons who are to be discharged as noticed above in
27 Paragraph 10, based upon, relating to, or arising out of, any of the matters which are discharged and
28 released pursuant to Paragraph 10 thereof and the Settlement Agreement.

1 12. Entry of Injunction Against Jamster. As provided in the Settlement, Jamster is
2 hereby permanently enjoined as specified in Section III.B of the Settlement Agreement.

3 13. No Admissions. The Settlement Agreement and this Order and Final Judgment are
4 not admissions of wrongdoing, liability or fault by Defendants, or a finding of the validity of any
5 claims in the Litigation or any wrongdoing or violation of law by Defendants. The Settlement
6 Agreement and settlement are not a concession by the Parties and to the extent permitted by law,
7 neither this Final Judgment, nor the Settlement Agreement, nor any of its terms or provisions, nor
8 any of the negotiations or proceedings connected with it, nor any actions required to be performed
9 by this Final Judgment or the Settlement Agreement, shall be offered as evidence or received in
10 evidence in any pending or future civil, criminal, or administrative action or proceeding, except in a
11 proceeding before this Court to consummate or to enforce the Settlement Agreement or Final
12 Judgment, or defend against the assertion of the Released Claims, or as otherwise required by law.
13 The Clerk is directed to enter this Final Order and Judgment forthwith as the final judgment of the
14 Court.

15
16 Dated: _____

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18 _____
19 JUDGE OF THE DISTRICT COURT
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EXHIBIT E

Legal Notice

If You Paid Unauthorized Charges for Jamster Mobile
Content (such as Ringtones,
Games, or Graphics) on Your Wireless Telephone Bill

You May Receive a Refund From a Class Action Lawsuit

This notice is to inform you of the proposed settlement of several similar lawsuits relating to allegations of unauthorized charges associated with the sale, marketing and billing of Jamster mobile content such as ringtones to wireless telephone subscribers.

What is Jamster Mobile Content?

Mobile content is a product (such as ringtones, games, or graphics) purchased and downloaded to your wireless device. Jamster markets and sells this type of content.

Who is Involved?

The class consists of: All persons in the United States who, at any time from March 8, 2001 to [date of Preliminary Approval], were subscribed to or have paid for a Jamster mobile content service plan or Jamster services or content.

What is the Case About?

Plaintiffs claim that Jamster advertised that customers could receive a free ringtone, or purchase a single ringtone, but when the customer tried to get the ringtone they were subscribed to a plan with recurring charges without their knowledge. Plaintiffs have also sued AT&T and T-Mobile, alleging, among other things, that they failed to verify that Jamster charges were authorized by customers and that they did not adequately describe such charges on customers' bills. The Defendants deny these claims but are settling to avoid the burden and costs of continued litigation.

What are the Terms of the Settlement?

As part of the agreement, Jamster is offering to provide customers with refunds for payments they made for unauthorized charges of mobile content purchases made from March 8, 2001 to _____, 2009, for each wireless telephone line, regardless of the wireless carrier, subject to a cap of three monthly subscription charges. Jamster has also agreed to provide information about subscriptions in its advertisements and to continue to provide a way for customers to be able to address billing issues and to cancel subscriptions.

Who Represents Me?

The Court has appointed attorneys to represent you at no cost to you. The attorneys will request an award of attorneys' fees and expenses not to exceed \$3.65 million. An award for attorneys' fees or expenses will not reduce the amount available for refunds. The Court has also appointed eight representatives who will each request an award of \$5,000 for their services. You may hire your own attorney, but only at your own expense.

What are my Legal Rights?

- **Stay in the Settlement.** You do not have to do anything to stay in the class. You give up your right to sue and are bound by all Court orders. You must send in a Claim Form to receive a Refund
- **Submit a Claim Form.** If you wish to file a claim, you must complete a Claim Form stating that you paid for unauthorized charges for Jamster mobile content. Claim Forms *must* be sent in online, postmarked, or otherwise received by the Claims Administrator by _____, 2010.
- **Exclude yourself** ("opt out") from the Settlement. A written request for exclusion must be submitted to the Claims Administrator postmarked by _____, 2010. You retain your right to sue but you will not get a refund as a result of this settlement.
- **Object and remain in the Settlement.** A written objection must be postmarked by _____, 2010. You and/or your lawyer have the right to appear before the Court and object to the proposed Settlement.

When will the Court Consider the Proposed Settlement?

The Court will decide whether to approve the Settlement and attorneys' fees and expenses at a Fairness Hearing held on _____, 2010. The Court will consider any comments or objections at that time. Do not call the Court for information about this Settlement or the litigation.

For complete information and a Claim Form:

Visit: www.JamsterMarketingLitigation.com Call: (8xx) xxx-xxxx

Write: Claims Administrator, Address, City, State Zip

EXHIBIT F

Attention Customers:

You May Be Eligible To Receive A Refund For
Unauthorized Jamster Mobile Content Charges

Please Read This Legal Notice

Because of a proposed Settlement of class action lawsuits, certain customers who have subscribed to or paid for Jamster mobile content may request refunds for payments for unauthorized charges for Jamster mobile content, such as ringtones, graphics, games, news, and other alerts.

What Is The Lawsuit About?

Plaintiffs claim Jamster advertised that customers could receive a free ringtone or purchase a single ringtone, but when the customer tried to get the ringtone they were subscribed to a plan with recurring charges without their knowledge. Plaintiffs have also sued AT&T and T-Mobile, alleging, among other things, that they failed to verify that Jamster charges were authorized by customers and did not adequately describe such charges on customers' bills. The Defendants deny these claims but are settling to avoid the burden and costs of continued litigation.

Who Is In The Settlement Class?

Consumers who subscribed to or paid for a Jamster mobile content service plan or Jamster services or content from March 8, 2001 to [date of Preliminary Approval].

What Does The Settlement Provide?

Jamster is offering to provide customers with refunds for unauthorized mobile content purchases made from March 8, 2001 to _____, 2009, that have not been previously refunded, subject to a cap of up to three monthly subscription charges per wireless telephone line. Jamster has also agreed to provide disclosures regarding mobile content subscriptions in its advertisements and to continue to provide means for customers to be able to address billing issues and to cancel mobile content subscriptions.

How Do I Know If I Am Eligible For A Refund?

If you were billed on your wireless account and paid for Jamster mobile content that you did not authorize, you may be entitled to receive a refund.

Who Represents Me?

The Court has appointed attorneys to represent you at no cost to you. The attorneys will request an award of attorneys' fees and expenses not to exceed \$3.65 million. An award for attorneys' fees or expenses will not reduce the amount available for refunds. The Court has also appointed eight representatives who will each request an award of \$5,000 for their services. You may hire your own attorney, but only at your own expense.

What are my legal rights?

- **Stay in the Settlement.** You do not have to do anything to stay in the class. You give up your right to sue and are bound by all Court orders. You must send in a Claim Form to receive a Refund
- **Submit a Claim Form.** If you wish to file a claim, you must complete a Claim Form stating that you paid for unauthorized charges for Jamster mobile content. Claim Forms *must* be sent in online, postmarked, or otherwise received by the Claims Administrator by _____, 2010.
- **Exclude yourself ("opt out") from the Settlement.** A written request for exclusion must be submitted to the Claims Administrator postmarked by _____, 2010. You retain your right to sue but you will not get a refund as a result of this Settlement.
- **Object and remain in the Settlement.** A written objection must be postmarked by _____, 2010. You and/or your lawyer have the right to appear before the Court and object to the proposed Settlement.

When Will The Court Consider The Proposed Settlement?

The Court will decide whether to approve the Settlement and attorneys' fees and expenses at a Fairness Hearing held on _____, 2010. The Court will consider any comments or objections at that time. Do not call the Court for information about this Settlement or the litigation.

This is only a summary of the proposed Settlement.

For complete information and a Claim Form:

Visit: www.JamsterMarketingLitigation.com Call: (8xx) xxx-
xxxx

Write: Claims Administrator, Address, City, State Zip