

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

SUSAN PALUZZI, GRACE PICICCI, and)
PATRICIA VERNON, individually and on)
behalf of a class of similarly situated individuals,)

Plaintiffs,)

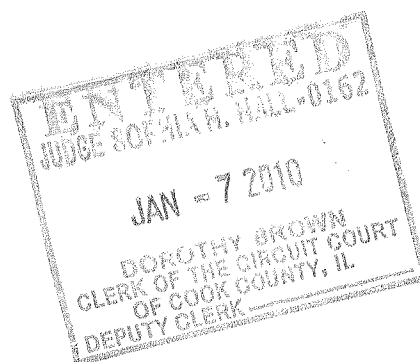
v.)

MBLOX, INC., a Delaware corporation;)
2WAYTRAFFIC MOBILE USA, INC., f/k/a)
EMEXUS AMERICAS, INC., a Delaware)
corporation; 2WAYTRAFFIC USA, INC., a New)
York corporation; DADA USA, INC. d/b/a DADA)
MOBILE, INC., a Delaware corporation; DADA)
ENTERTAINMENT, LLC, a California limited)
liability company; LAVALIFE, LLC, a)
Pennsylvania limited liability company; MOBILE)
ENTERTAINMENT, INC., a Pennsylvania)
corporation; PLAYPHONE, INC., a Delaware)
corporation; SENDME, INC., a Delaware)
corporation; SJA MOBILE, LLC, a Delaware)
limited liability company; UPOC NETWORKS,)
INC. f/k/a UPOC, INC., a Delaware corporation, a)
W3I MOBILE, LLC f/k/a FREEZE MOBILE, LLC,)
a Minnesota limited liability company; W3I)
HOLDINGS, LLC, a Minnesota limited liability)
company; SONY PICTURES ENTERTAINMENT)
INC., a Delaware corporation, and CELLCO)
PARTNERSHIP, a Delaware General Partnership)
d/b/a Verizon Wireless.)

Defendants.)

No. 07 CH 37213

Hon. Sophia H. Hall



~~PROPOSED~~ **FINAL ORDER AND JUDGMENT**

This matter coming to be heard on Plaintiffs' Motion for Final Approval of Class Action Settlement, Attorneys' Fees, and Incentive Awards, due and adequate notice having been given

to the Settlement Class¹ as required by this Court's September 10, 2009 Order, as modified by the Court on October 21, 2009, and the Court having considered the briefing and proceedings and otherwise being fully advised in the premises, IT IS HEREBY ORDERED, ADJUGED AND DECREED as follows:

1. This Court has jurisdiction over the subject matter of this Action and over all parties to the Action, including all members of the Settlement Class, Additional Defendants, and Included Parties as listed on Addendums A and D of the Agreement.

2. On September 10, 2009, this Court preliminarily approved the Agreement and certified the Settlement Class consisting of:

All current and former Wireless Subscribers in the United States and its territories who, at any time until thirty (30) days after preliminary approval is entered, were charged for Mobile Content associated with mBlox or any Additional Defendant that was not authorized.

The following Persons were excluded from the definition of the Settlement Class:

- (a) Defendants, including mBlox or any Additional Defendant, or any Included Party, the Claims Administrator, and any respective parent, subsidiary, affiliate or control person of Defendants or an Included Party, as well as the officers, directors, agents, servants, or employees of Defendants or an Included Party, any judge presiding over this Action and/or any of the Related Actions, and the immediate family members of any such Person(s);
- (b) Class members who have claimed refunds through other settlements that have received or will receive final approval and where a judgment releasing the claim has been or will be entered, including *McFerren v. AT&T Mobility LLC*, No. 2008-CV-151322 (Fulton County, Georgia), *Gray v. Mobile Messenger Americas, Inc., et. al.*, No. 2008-CV-61089 (S.D. Fla.), and *Vandyke, et. al. v. Media Breakaway, LLC*, 2008-22131-CIV (S.D. Fla.), if such final approval and judgment is entered prior to the effectuation of the Judgment; and
- (c) Persons with deceptive marketing claims encompassed within the *In re Jamster* MDL No. 1751, 05-CV-0819 JM (CAB), meaning specifically those claims alleging that "(i) VeriSign and Jamster defendants have falsely represented to

¹ Capitalized terms not otherwise defined in this order shall have the same meaning as ascribed to them in the Stipulation of Class Action Settlement filed on August 28, 2009.

consumers that mobile customers can get a free ring tone or other phone service by sending a message to Jamster or by registering on the internet; and (ii) instead of receiving the free content, those customers then received repeated text messages from defendants for which they were charged by defendants.”

On October 21, 2009, the Court modified the September 10, 2009 Preliminary Approval Order.

3. The Court hereby confirms and grants final certification to the Settlement Class as defined above and finds that the requirements of Section 2-801 of the Illinois Code of Civil Procedure for maintenance of this action as a class action have been satisfied in all respects.

4. The Settlement Class Notice was disseminated to the Settlement Class under the terms of the Agreement via electronic mail to 1,513,111 separate addresses, by website publication, targeted Internet advertising, and through newspaper publication.

5. On October 26, 2009, the court-approved Settlement Class Notice was published in the *Miami Herald*, the *New York Daily News*, the *Los Angeles Times*, the *Chicago Sun Times*, the *Philadelphia Inquirer*, the *Dallas Morning News*, the *Houston Chronicle*, the *Fort Worth Star Telegram*, the *Washington Post*, the *Atlanta Journal-Constitution*, the *Boston Globe*, and *USA TODAY*, and also appeared in the November 6, 2009 edition of *Entertainment Weekly Magazine*.

6. In accordance with the Court’s Preliminary Approval Order of September 10, 2009, and as modified by the Court on October 21, 2009, the court-approved Settlement Class Notice was posted on the website www.mobilecontentsettlement.com. The website was launched on October 24, 2009 and will remain active through and beyond the Claims Deadline.

7. The Settlement Class Notice fully informed Settlement Class members of their rights with respect to the Agreement, including the right to be excluded and to object to the Agreement or the application for an award of attorneys’ fees and reimbursement of expenses,

and incentive awards.

8. The forms of Settlement Class Notice collectively met the statutory requirements of notice under the circumstances, including the individual notice to all members of the Settlement Class who could be identified through reasonable effort due to the nature of this lawsuit and the definition of the class, and fully satisfied 735 ILCS 5/2-803 and the requirements of due process.

9. The Action and each Settled Claim contained therein, are DISMISSED WITH PREJUDICE as to each Releasing Party, and as against each Released Party. The Parties are to bear their own costs, except as otherwise provided in the Agreement.

10. The Court finds that the Agreement is fair, just, reasonable, and adequate as to each member of the Settlement Class. *See Steinberg v. Sys. Software Assoc., Inc.*, 306 Ill. App. 3d 157, 713 N.E.2d 709 (1st Dist. 1999). Specifically, the complex legal and factual posture of this case, the history of the litigation, and the fact that the settlement was the result of arms-length negotiations, support this finding. The Court notes that no Settlement Class Member objected to the Settlement. Accordingly, the Agreement is hereby finally approved in all respects, and the Parties are hereby directed to perform its terms.

11. In accordance with the Agreement, mBlox shall pay all Approved Claims, Claims Administration Expenses, the Fee Award, and the Incentive Award from the Settlement Fund. mBlox shall be permitted to apply against the Settlement Fund 60% of all refunds given outside of the Claim Form process as detailed in the Agreement by the Claims Deadline; provided, however, that in no instance shall the application of such refunds against the Settlement Fund exceed 60% of the Settlement Fund. The Remaining Funds are the property of mBlox.

12. The Plaintiffs in the Action and the Related Actions, on behalf of themselves and

the Settlement Class, are deemed to have, and by operation of the Judgment shall have, absolutely and unconditionally released each Released Party from each and every Settled Claim.

13. All members of the Settlement Class are hereby forever barred and enjoined from prosecuting each and every Settled Claim against any Released Party.

14. mBlox and each Additional Defendant are deemed to have, and by operation of the Judgment have, absolutely and unconditionally released and forever discharged the Plaintiffs, the Settlement Class and Class Counsel from any and all claims relating to, or in connection with the institution or prosecution of the Action or the settlement of any Settled Claim.

15. Class Counsel is hereby awarded a Fee Award ^{and cost reimbursement} in the amount of ^{SAA} \$ 6,508,500.00, which the Court finds to be fair and reasonable. The Fee Award shall be paid by mBlox pursuant to the terms of the Agreement. The Fee Award to Class Counsel shall be paid pursuant to the timing requirements described in the Agreement. The Fee Award shall be allocated by Lead Class Counsel in a manner which, in their sole discretion, they determine fairly compensates all Class Counsel for their respective contributions to the prosecution of the Action and Related Actions.

16. ^{SAA} The Plaintiffs in the instant Action and the Related Actions are hereby awarded an incentive award of \$ 35,000.00, which shall be shared as specified in the Agreement and as set forth on Addendum B thereto. The incentive award shall be paid by mBlox pursuant to the timing requirements described in the Agreement.

17. All payments made to Settlement Class Members pursuant to the Agreement that are not cashed within ninety (90) days of issuance shall be directed to Coordinated Advice & Referral Program for Legal Services ("CARPLS"), which the Court approves as an appropriate *cy pres* recipient pursuant to 735 ILCS 5/2-807.

18. In making this award of attorneys' fees and incentive award to the Plaintiffs in the instant Action and the Related Actions, the Court has considered and found that:

- (a) The Agreement achieved as a result of the efforts of Class Counsel has created a Cash Refund Benefit and a Cash Award Benefit for the Settlement Class. In addition, the Agreement has resulted in significant prospective relief for the Settlement Class designed to benefit millions of Settlement Class members moving forward;
- (b) Class Counsel have conducted the litigation and achieved the Agreement with skill, perseverance, and diligent advocacy;
- (c) The Action and Related Actions involves complex factual and legal issues and, in the absence of a settlement, would have likely involved further lengthy proceedings with uncertain resolution of the issues;
- (d) Had Class Counsel not achieved the Agreement, there would remain a significant risk that the Plaintiffs and the Settlement Class may have recovered less from the Defendants, Additional Defendants, and Included Parties;
- (e) The amount of attorneys' fees awarded are consistent with awards in similar cases;
- (f) The Plaintiffs in this Action and the Related Actions rendered valuable service to the Settlement Class. Without their participation, there would have been no case or settlement.

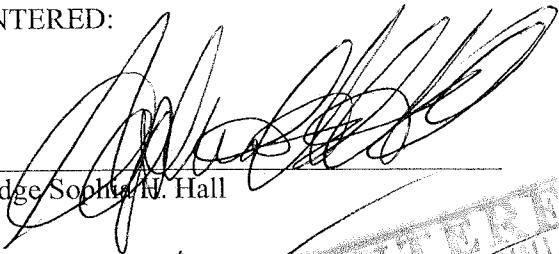
19. mBlox, the Additional Defendants, and Included Parties are hereby enjoined for a limited term of twenty four (24) months, requiring each of them independently to remain in compliance with either the Mobile Marketing Association's Consumer Best Practices Guidelines, (Version 4.0, available at www.mmaglobal.com/bestpractices.pdf, last updated July 1, 2009) or the CTIA Consumer Code for Wireless Service (available at www.files.ctia.org/pdf/The_Code.pdf) that are in effect as of the Effective Date of this Agreement and as are amended from time to time, so long as those guidelines do not conflict with any rule or regulation imposed by any wireless carrier. Notwithstanding the foregoing, this Paragraph shall

not apply to entities, including Sony Pictures Entertainment, which serve only as licensors of intellectual property for use as Mobile Content.

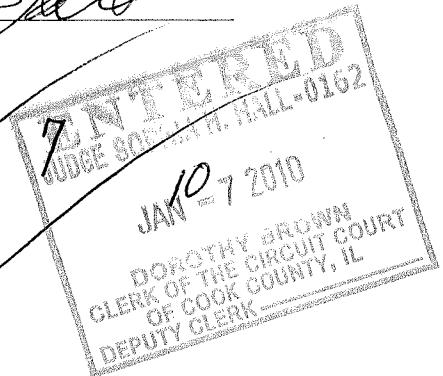
20. The persons listed on the attached Appendix of requested exclusions are hereby deemed to have properly opted-out/excluded themselves from the Agreement and shall not be bound by its terms.

21. Without affecting the finality of this Judgment in any way, this Court hereby retains continuing jurisdiction over the Action for the purpose of construing, enforcing and administering the Agreement and its terms.

ENTERED:



Judge Sophia M. Hall



APPENDIX A

1. Kenneth J. Blain