

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

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

*Plaintiffs,* )

v. )

MBLOX, INC., a Delaware corporation; CELLCO )  
PARTNERSHIP, a Delaware General Partnership )  
d/b/a Verizon Wireless; 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; SONY PICTURES )  
ENTERTAINMENT, INC., a Delaware )  
corporation; 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; 2WAYTRAFFIC USA B.V., a Dutch )  
corporation; )

*Defendants.* )

No. 07 CH 37213

Hon. Sophia H. Hall

**ORDER PRELIMINARILY APPROVING CLASS ACTION SETTLEMENT,  
CERTIFYING NATIONWIDE SETTLEMENT CLASS, APPROVING PROCEDURE  
AND FORM OF NOTICE, AND SCHEDULING FINAL FAIRNESS HEARING**

This matter came before the Court on September 10, 2009 for status and a hearing on Plaintiff's Motion for Leave to File an Amended Complaint and for Preliminary Approval of

Class Action Settlement<sup>1</sup> as set forth in the Stipulation of Class Action Settlement (the “Agreement”). Due and adequate notice having been given and the Court having fully considered the briefs and having been duly advised in the premises and good cause appearing therefore, IT IS HEREBY ORDERED, ADJUGED AND DECREED as follows:

1. Plaintiff’s Motion For Leave to File An Amended Complaint is granted and said Complaint is deemed filed *instanter*.

2. The Court has reviewed the Stipulation of Settlement, as well as the files, records, and proceedings to date in this matter. The Court finds that: (a) the Agreement is “within the range” of possible final approval as fair, reasonable and adequate; (b) the Agreement is the result of arms’ length negotiations between experienced attorneys familiar with the legal and factual issues of this case; (c) all Class members appear to have been treated fairly under the Agreement; and (d) the Agreement is sufficient to warrant notice thereof to members of the Class and the Fairness Hearing described below. Accordingly, the Plaintiff’s Motion for Preliminary Approval is Granted for the reasons articulated in the Plaintiff’s brief.

3. The Court hereby confirms and grants certification to the Settlement Class as defined below and preliminarily 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 and for the reasons set forth in Plaintiff’s Motion for Preliminary Approval of Class Action Settlement. The Settlement Class is defined as follows:

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

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<sup>1</sup> Capitalized terms not otherwise defined in this order shall have the same meaning as ascribed to them in the Stipulation of Class Action Settlement.

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

- (1) 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);
- (2) Class members who have claimed refunds through other settlements that have received or will receive final approval and where a judgment releasing 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
- (3) Persons with deceptive marketing claims encompassed within the litigation known as *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 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.”

4. Jay Edelson, Myles McGuire, Steven Lezell, and Ryan D. Andrews of KamberEdelson LLC are appointed Lead Class Counsel.

5. Robert Shelquist is appointed chairman of the Plaintiff’s Steering Committee, which is comprised of attorneys Robert Shelquist, David Healy, John G. Jacobs, David Parisi, Clifford Cantor, and Ilan Chorowsky.

6. Susan Paluzzi, Grace Picicci, Patricia Vernon and those named plaintiffs in the Related Actions included in Addendum B of the Agreements are appointed as Class Representatives.

7. The firm of Rosenthal & Company is hereby appointed as Claims Administrator for the Agreement and shall perform all of the duties of the Claims Administrator as set forth in

the Agreement and in this Order.

8. The form and methods of proposed notice set forth in the Notice Plan of the Agreement appear to be adequate, proper, and to comport with Due Process. The Court finds that the content of the long form “web” notice and summary form notices and the manner of their dissemination described below are the best practicable notice under the circumstances and are reasonably calculated to apprise the Settlement Class members of the pendency of this action, the terms of the Agreement, and their right to object to the Settlement or exclude themselves from the Settlement Class.

9. The Settlement Class Notice as described in the Agreement shall be commenced within forty-five (45) days of the date of this Order, or by October 26, 2009.

10. Each Settlement Class Member who wishes to be excluded from the Settlement Class and follows the procedures set forth in this Paragraph shall not be Settlement Class members and shall have no rights with respect to the Agreement, should it be approved. Any potential member of the Settlement Class may mail a written request for exclusion, to Rosenthal & Company or its designee(s), postmarked no later than December 10, 2009. Except for those Persons who have properly opted out, all Settlement Class Members will be bound by this Agreement and the Judgment. Any Person who elects to opt out of the Settlement Class shall not: (i) be bound by any orders or Judgment entered in this Action; (ii) be entitled to relief under this Agreement; (iii) gain any rights by virtue of this Agreement; or (iv) be entitled to object to any aspect of this Agreement. The Request For Exclusion must be personally signed by the Person requesting exclusion. No Person may opt out of the Settlement Class through “mass” or “class” opt-outs. The names of all such excluded individuals shall be included in or attached to Order of Final Judgment of this Court.

11. Any Settlement Class Member who has not timely submitted a written request for exclusion from the Settlement Class, and thus is a Settlement Class Member, may object to the fairness, reasonableness or adequacy of the Agreement, the Incentive Award, or the Fee Award, or any of them. Settlement Class members may do so either on their own or through counsel hired at their expense. Any Settlement Class Member who wishes to object to the Agreement must file an objection with this Court on or before December 10, 2009. The objection must contain the following: (i) a notice of the objector's intention to appear at the Fairness Hearing, if the objector so intends; (ii) the name and address of the objector and the objector's counsel (if the objector intends to appear through counsel); (iii) a statement of the basis for each objection asserted; (iv) documentary proof that the objector is a Settlement Class Member; (v) any legal authorities that the objector wishes the Court to consider; (vi) a list of documents and things the objector wishes the Court to consider; (vii) a list of documents and things the objector may offer as evidence or exhibits; and (viii) the names and addresses of any witnesses the objector may call to testify and a summary of each such witness's expected testimony. On or before that same date, any such objecting Settlement Class Members shall serve a copy of such papers by first-class mail on each of the following counsel:

Jay Edelson  
KamberEdelson LLC  
350 North LaSalle, Suite 1300  
Chicago, IL 60654

and

Craig M. White, Esq.  
Wildman, Harrold, Allen & Dixon LLP  
225 West Wacker Drive, Suite 3000  
Chicago, IL 60606

12. Papers in support of final approval of the Agreement, Incentive Awards, and the

Fee Award, along with the response to any objections shall be filed with the Court on or before

December 18, 2009.

13. A Final Fairness Hearing is set this matter on January 7, 2010 at 11:00 a.m. in Room 2301.

14. Counsel are hereby authorized to use all reasonable procedures in connection with approval and administration of the settlement that are not materially inconsistent with this Order or the Agreement, including making, without further approval of the Court, minor changes to the form or content of the Notices, and other exhibits that they jointly agree are reasonable or necessary.

Date: \_\_\_\_\_

ENTERED:

\_\_\_\_\_  
Judge Sophia H. Hall

