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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 SCOTT NELSON, Individually and on Behalf of
12 All Others Similarly Situated,

13 Plaintiff,

14 vs.

15 VIRGIN MOBILE USA, L.L.C., and
16 VIRGIN MOBILE USA, INC.,

17 Defendants.
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Case No.: 05CV1594 AJB

CLASS ACTION

**[PROPOSED] ORDER PRELIMINARILY
APPROVING SETTLEMENT AND CLASS
NOTICE PROGRAM**

Magistrate Judge: Hon. Anthony J. Battaglia

21 WHEREAS, the Court has reviewed the Settlement Agreement (the "Agreement"), that has
22 been entered by and among plaintiff and defendants, and

23 WHEREAS, the Court has reviewed the papers submitted in support of Joint Application for
24 Preliminary Approval of Settlement; and good cause appearing therefor,

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1 IT IS HEREBY ORDERED as follows:

2 1. For purposes of this Order, the Court adopts all defined terms as set forth in the
3 Agreement, attached hereto as Exhibit A, which Agreement is incorporated by reference herein.

4 2. The Court preliminarily approves the settlement of this action on the terms set forth in
5 the Agreement as being fair, just, reasonable, and adequate to the Members of the Class, and subject
6 to further consideration at the final approval hearing described below after distribution of notice to
7 the Class Members as set forth below.

8 3. The Court approves as to form and content for distribution to the Settlement Class
9 Members the Notice of Proposed Class Action Settlement and Settlement Hearing (the "Notice"
10 (Agreement, Ex. 1)), the Summary Notice of Class Action Settlement ("Summary Notice"
11 (Agreement Ex.3)), the website, e-mail, postcard and text mail messages as described in paragraph 31
12 of the Agreement, all of which are to be distributed substantially in the forms attached to the
13 Agreement and as set forth in the Agreement.

14 4. The Court provisionally certifies the Class for settlement purposes only, finding that
15 all of the requirements for certification of the Class as set forth in Fed. R. Civ. P. 23 are satisfied
16 based upon the allegations of the Complaint and the evidence provided to the Court, subject to further
17 consideration at the Fairness Hearing after distribution of notice to the Class Members as set forth
18 above.

19 5. The website and toll-free number are to be fully operational no later than April 30,
20 2006. The email, text message and post card notices are to be disseminated by VMU by no later than
21 May 8, 2006. VMU shall also cause to be published the Summary Notice once a week for two
22 consecutive weeks, completed no later than May 8, in the national edition of *USA Today*.

23 6. The Court finds that the class notice program described in the Agreement and
24 disseminated as set forth above constitutes the best notice practicable under the circumstances to the
25 Class Members and meets the requirements of Federal Rules of Civil Procedure Rule 23(e) and due
26 process under the United States Constitution and any other applicable law and shall constitute due
27 and sufficient notice to all persons entitled thereto.
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1 7. Any Class Member who might object to the proposed settlement set forth in the
2 Stipulation shall have a right to appear and be heard at the Fairness Hearing. No later than June 12,
3 2006, any such person must file with the Court and serve upon Class Counsel and Defendants'
4 Counsel a written notice of objection and any written statement opposing the settlement. The manner
5 and form by which a notice of objection must be prepared, filed, and delivered is stated in the Notice
6 and Summary Notice. Only Class Members who have timely filed and delivered properly completed
7 written notices of objection will be entitled to be heard at the Fairness Hearing, unless the Court
8 orders otherwise.

9 8. The deadline for submitting requests for exclusion from the Class shall be June 12,
10 2006. To be valid, all requests for exclusion must be postmarked by that deadline. Except as
11 otherwise provided in the Agreement, the deadline for submitting claims shall be August 15, 2006.

12 9. No later than May 15, 2006, any documents the parties wish to file supporting the
13 settlement shall be served and filed with the Court. Any reply memorandum addressing any of the
14 objections timely and validly filed pursuant to paragraph 7 of this Order, if any, shall be served and
15 filed with the Court no later than June 19, 2006.

16 10. The Fairness Hearing will be held on June 26, 2006, at 10:00 a.m., in this Court for the
17 purpose of determining whether the proposed settlement of the action on the terms set forth in the
18 Agreement should be approved as fair, reasonable, and adequate to the Class members, whether the
19 Class should be finally certified for settlement purposes and whether the Order finally approving the
20 settlement and dismissing the Action with prejudice should be entered.

21 11. The Order finally approving the settlement, if entered, will permanently bar and enjoin
22 Plaintiff, Released Persons, and all Members of the Class from instituting or prosecuting, in any
23 capacity, any action or proceeding that involves any of the claims asserted in the Action, as well as
24 any claims any Released Parties might have against either Plaintiff or Class Counsel arising out of the
25 notification, publication, prosecution, or resolution of this Action and the claims asserted herein. To
26 the fullest extent of the Court's powers to do so as permitted by law, all persons who have any such
27 claims are hereby restrained and enjoined from prosecuting such claims pending determination of
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1 whether to enter the final Order approving settlement, or from taking any action that may undermine
2 or hinder the consideration of the Settlement by the Court.

3 12. The Court may, for good cause, extend any of the deadlines set forth in this Order
4 without further notice to Class Members. The Court may also adjourn or continue the Fairness
5 Hearing without further notice to Class Members.

6 **IT IS SO ORDERED.**

7 DATED: March _____, 2006

8 _____
9 Hon Anthony J. Battaglia
10 U.S. Magistrate Judge
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EXHIBIT A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

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SCOTT NELSON, Individually and On Behalf
of All Others Similarly Situated, :
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Plaintiff, :
 : 05 CV 1594 (AJB)
- against - :
 :
VIRGIN MOBILE USA, LLC., and VIRGIN :
MOBILE USA, INC., :
 :
Defendants. :
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SETTLEMENT AGREEMENT

IT IS STIPULATED AND AGREED as of March 15, 2006 by plaintiff Scott Nelson ("Nelson") and defendant Virgin Mobile USA, LLC ("VMU"), subject to the approval of the Court, that the class action allegations asserted in the above-captioned lawsuit (the "Action") are fully settled and released as against VMU and any other Released Party (as defined below) in accordance with the terms and conditions set forth herein.

IT IS FURTHER STIPULATED AND AGREED by Nelson and VMU, subject to the approval of the Court, that Nelson's individual allegations asserted herein are fully settled and released as against VMU and any other Released Party in accordance with the terms and conditions set forth herein.

I. BACKGROUND

A. The Parties

1. VMU is a national provider of pay-as-you-go wireless telephone services. Launched in July 2002, VMU currently has approximately four million customers enrolled.

2. Plaintiff Nelson is an individual residing in California. In June 2005, Nelson purchased a VMU mobile phone handset (a "Handset") and became a VMU customer.

B. VMU's Services

3. To become a customer of VMU's services, an individual needs to purchase a VMU handset and activate it.

4. Customers can replenish or top-up their accounts by, among other methods, purchasing a "Top-Up Card" at a third party retail store.

- **VMU's Starter Airtime Promotion**

5. From its launch in July 2002 until April 5, 2005, VMU offered free starter airtime to new customers in the amount of ten dollars (\$10). The availability of this free starter airtime was printed on various Handset packages.

6. Beginning in late 2004, VMU began the process of changing its Handset packaging to refer to "free starter airtime", without specifying any specific dollar amount.

7. Only the packaging for the following models of Handsets stated that purchasers would receive \$10 free starter airtime: The Super Model, The Party Animal, Vox 8500, the K-7 Rave, Slider V5, K9, Flasher V7 and Vox 8610 (collectively, the "Relevant Handsets").

8. Of the Relevant Handsets, VMU produced different versions of packaging for four models: the (i) Slider V5, (ii) K9, (iii) Vox 8610 the (iv) Flasher V7 (collectively, the "Dual-Packaged Relevant Handsets"). Initial packaging for such Dual-Packaged Relevant Handsets stated purchasers would receive \$10 free starter airtime. Subsequent packaging stated that purchasers would receive "free starter airtime". The Super Model, The Party Animal, K-7 Rave and Vox 8500 Handsets (collectively, the "\$10 Relevant Handsets"), were available only in packaging claiming purchasers would receive \$10 free starter airtime.

9. On April 5, 2005, VMU lowered the amount of starter airtime offered to five dollars (\$5.00).

10. On May 17, 2005, the amount of free starter airtime was reduced from \$5 reduced to two dollars and fifty cents (\$2.50).

11. VMU asserts that, in connection with its reduction in the amount of free starter airtime, VMU implemented a policy of providing a full credit to any new customer who contacted Virgin Mobile At Your Service, the company's customer care service, to contest the amount of the customer's starter airtime credit. Plaintiff asserts that policy was not publicly disclosed, and was not followed based on his own personal experience.

- ***VM (*86) Call Charges**

12. Prior to November 2003, VMU produced Top-Up Cards which stated that calls to Virgin Mobile At Your Service by dialing *VM "never cost a cent."

13. From its launch in July 2002 until May 12, 2005, VMU did not charge its customers for Handset calls to Virgin Mobile At Your Service using the *VM code (also called "*86" or "*VM Calls").

14. On May 12, 2005, VMU began assessing airtime charges for *VM Calls from Handsets.

C. Nelson's Allegations

15. On or about June 24, 2005, Nelson purchased one of the Relevant Handsets. The packaging of the Relevant Handset that Nelson purchased represented that the purchaser would receive \$10 free starter airtime.

16. As Nelson purchased the Handset after May 17, 2005, upon activating his phone Nelson received \$2.50 worth of free starter airtime. Nelson alleges that he complained to VMU about this discrepancy, both over the phone and in writing, prior to the initiation of the Action, but did not receive the additional credit.

17. During June and July 2005, Nelson purchased several Top-Up Cards from various third party retailers throughout California. Several of these Top-Up Cards represented "Dial *VM (*86) from your mobile phone. It's a free call!" Nelson was charged for calls he made to *VM.

18. Nelson filed the Complaint herein on August 11, 2005, on behalf of himself individually and a class of VMU customers represented by Rosner Law & Mansfield LLP ("Class Counsel").

19. The Complaint alleged (i) violations of the California Consumers Legal Remedies Act, Cal. Civ. Code §§ 1750 et seq. (Count I); (ii) violations of California Business & Professions Code § 17200 and comparable consumer protection laws prohibiting unlawful, unfair or fraudulent business acts or practices (Count II); and (iii) breach of contract (Count III). The Complaint also sought declaratory relief against VMU (Count IV).

20. With regard to free starter airtime, the Complaint alleges that despite "[the \$10 free starter airtime] representation" VMU provided "only a small fraction of the promised time" (Compl. ¶ 2).

21. With regard to the *86 charges, the Complaint alleges that VMU has directed "consumers to the 'free' customer service and to focus on Defendants' 'no hidden fees' policy," but charged fees for such calls. (Compl. ¶ 3).

D. Events Leading to This Settlement Agreement

22. VMU filed an Answer on October 4, 2005, denying the material allegations in the Complaint.

23. Beginning in August 2005, the parties conducted an informal exchange of information and positions. As part of the process, and as a result of Class Counsel's continuing due diligence investigation, VMU has provided Class Counsel with relevant documents and sworn statements addressing all facts material to Nelson's allegations, sufficient so that counsel for both parties will be fully informed of the strength and weaknesses of the claims and defense asserted in the action.

24. At an Early Neutral Evaluation Conference held by Magistrate Judge Anthony Battaglia on December 13, 2005, the parties and their counsel engaged in serious face-to-face settlement negotiations. At the direction of and with the assistance of Magistrate Judge Battaglia, the parties and their counsel focused their efforts on attempting to settle the Action on behalf of the Class, and thereafter engaged in direct settlement negotiations. Counsel for the parties reported on the status of those negotiations to Magistrate Judge Battaglia on January 18 and January 31, 2006, all in an effort to ensure these were informed, non-collusive, good faith settlement negotiations.

The amount of payments to Nelson and Class Counsel were only negotiated after Magistrate Judge Battaglia confirmed all other material settlement terms had been agreed to between the parties.

25. Nelson and Class Counsel believe that the claims asserted in the Action have merit. However, they both acknowledge the risks inherent in this litigation, as well as the considerable length of time that would be involved if litigation proceeds. Nelson and Class Counsel have taken into account the uncertain outcome and risk of any litigation, especially in complex actions such as this Action, as well as the difficulties and delays inherent in such litigation, and have weighed those risks against the benefits to be provided Class members under the terms of this Settlement. Nelson and Class Counsel believe that the proposed Settlement Agreement confers substantial benefits upon the Class and therefore is in the best interests of the Class.

26. By entering into this Settlement Agreement, VMU does not admit any improper or unlawful conduct on its part, or concede that it is liable to Nelson or any putative class member. VMU does not concede that any class action could be certified over objection under the applicable laws of California or the Federal Rules of Civil Procedure, but enters the Settlement believing it is a fair compromise of the claims asserted in the Action.

27. VMU represents that the defendant Virgin Mobile USA, Inc. ("INC.") is not under VMU's control and was not involved in the activities that are alleged in the Complaint. Plaintiff acknowledges that VMU, not INC., is the party providing the consideration for this Settlement, and that claims against INC. shall be dismissed with prejudice upon final Court approval of the Settlement.

II. SETTLEMENT TERMS

A. Class Defined

28. The settlement "Class A" is defined as (i) all current VMU customers who are the original purchasers of one or more Relevant Handsets that advertised on its packaging that the purchaser was entitled to ten dollars (\$10) of free starter airtime, who activated service for one or more of the Relevant Handsets on or after April 5, 2005 and who did not receive \$10 in free starter airtime for such activations from VMU.

29. The settlement "Class B" is defined as (i) all former VMU customers who otherwise fall into the definition of Class A and (ii) all VMU customers (whether current or former) who were billed for calls to Virgin Mobile At Your Service by dialing the *VM code on handsets after May 12, 2005.

30. Settlement "Class A" and settlement "Class B" are collectively referred to throughout this Agreement as the "Class".

B. Notice

31. VMU shall give notice of the Settlement and "Fairness Hearing" (as that term is defined herein to members of the Class by the following means:

(a) All Class members who are current customers of VMU shall receive a text message to their current registered Handset stating:

**Court-Approved Notice. You may be eligible for airtime credits.
Check www.vmclasssettlement.com or 888-XXX-YYYY for details.
Your legal rights may be affected.**

(b) VMU will create a website, www.vmclasssettlement.com, that will contain, at a minimum, the full form of the Class Notice (which notice is attached hereto as **Exhibit 1**), the Court's Preliminary Approval Order (see **Exhibit 2** hereto), the

Settlement Agreement, the CAFA Notification, and the electronic claim form described below with instructions how to complete the form.

(c) VMU will publish in an agreed-to national publication set forth in the Preliminary Approval Order a Summary Class Notice substantially in the form attached hereto as **Exhibit 3**, once a week for two weeks.

(d) VMU will by April 30, 2006 place a direct link on its home page to www.vmclasssettlement.com, with explanatory text, which will remain on the website for a period of 10 days from the date of the Court's order finally approving (or refusing to approve) this settlement. Said link and explanatory material shall be substantially in the following form:

"For information about a recent settlement of a legal action about starter
airtime and charges for *VM calls, go to www.vmclasssettlement.com"

(e) VMU will by April 30, 2006 place a comparable link on all specific customer pages of current customers who are members of the Class to www.vmclasssettlement.com, with explanatory text, which will remain on such customer pages for a period of 10 days following the date of the Court's Order finally approving (or refusing to approve) this settlement. Said link and explanatory text shall be substantially in the following form:

Legal Notice. You may be eligible for a free airtime credit arising from a settlement by Virgin Mobile of legal claims about starter airtime credits and calls to Virgin Mobile At Your Service by dialing *VM or *86. Go to www.vmclasssettlement.com for details, including deadlines that may affect your legal rights."

(f) VMU will send an email message to the last known email addresses of any former customers falling within the definitions of the Class stating:

Court-Approved Notice -- As a result of charges you may have previously been billed, you may be entitled to airtime credits if you elect to reactivate

your Virgin Mobile service, or a merchandise credit for accessory items available on the Virgin Mobile website. Go to www.vmcassettlement.com or call 888-XXX-YYYY for more information. Check this out, since if you do nothing, it may affect your legal rights.

(g) To the extent VMU does not have email addresses for former customers falling within the definition of the Class, it will send a notice by means of a postcard to each such former class member, to the extent VMU has a mailing address in its records, containing similar information as set forth in subparagraph (f) above.

(h) Pursuant to 28 U.S.C. Section 1715, upon execution of this Settlement Agreement, VMU will also mail this Settlement Agreement, the Class Notice, a summary letter and the Complaint to the U.S. Attorney General and to all attorneys General in the 50 states ("CAFA Notification") no later than March 24, 2006.

32. The cost of the above-described notice program will be borne by VMU. The form and content of all notices to be provided to the Class shall, if not specified herein, be subject to review by Class Counsel and, in the event of a dispute regarding the adequacy of the notice under the standards set forth herein, approval by the Court.

C. Consideration Provided Under the Settlement

• ***VM Charges/Current Customers**

33. In response to the claims asserted in the Action and as part of the Settlement, on January 19, 2006, VMU stopped charging for *VM calls. VMU does not have any current plans to charge for such calls again.

34. VMU further agrees to desist from charging customers for calls made to *VM for a minimum period of one (1) year from the date the Court executes the Order granting final approval of the Settlement.

35. For the next five (5) years from the date of this Agreement, VMU will not place statements indicating that calls to *VM are free-of-charge on any VMU merchandise or promotional material that would be expected to remain available to customers or potential customers for an extended period of time. VMU reserves the right to place such language on its website and in print/media advertising, so long as VMU in fact does not charge customers for *VM calls during the time such claims are made in such media.

36. As part of this Settlement, no later than May 15, 2006, VMU will have issued account credits for future airtime use to its then-current customers who are Class B Members equal to the *VM charges previously imposed on such members. VMU estimates that this will result in account credits totaling approximately \$560,000. The actual amount of such credits, as well as the number of customers receiving such credits, will be provided to the Court by Declaration from VMU as soon as that information is reasonably available and has been verified by VMU and reviewed by Class Counsel, but no later than 30 days prior to the Fairness Hearing.

37. In the event that VMU elects to reinstitute charging for *VM calls, after this one-year period, it will do so only after 30-days prior notice to existing customers given by means of (i) a single text message, (ii) a prominent notice on the VMU website, and (iii) a similar notice on all specific customer pages of those persons who are members of the Class. The latter two notices will appear for a minimum of 60 days, beginning no later than 30 days prior to the institution of the charge and for 30 days after VMU has implemented this charge.

- Starter Airtime/Current Customers

38. Through March 31, 2006 (the "Credit Issuing Period"), VMU will continue to give credits to any current customer who is a Class A Member and who contacts VMU Customer Care and complains that they did not receive the full amount of free starter airtime to which they believed they were entitled, provided that such customer, in fact, did not previously receive a credit of \$10 for starter airtime at the time of activation or thereafter.

39. For two (2) years from the date the Court issues an Order preliminarily approving this Settlement Agreement, VMU agrees not to place a specific dollar amount of promotional starter airtime on any of its Handset packaging or "Starter Guides" (which are inserts to Handset packages).

40. For two (2) years from the date the Court issues an Order preliminarily approving this Settlement Agreement, VMU agrees not to reduce the amount of free starter airtime (i.e., \$2.50) it currently offers to new customers.

41. If, after two years from the date the Court enters an Order preliminarily approving this settlement, VMU decides to eliminate free starter airtime altogether, it will cease shipping any packaging claiming free starter airtime at least six months prior to the effective date of the new policy.

42. VMU will create a Class A Settlement Fund of \$2.7 million for airtime credits. The amount of said Fund available for credits shall be reduced by the amount of (i) Class Counsel fees and expenses (which, when added to the class representative payment provided for herein, shall not to exceed 20% of the \$2.7 million Settlement Fund), (ii) costs and expenses paid to third parties for notice and administration costs not to exceed \$175,000 (the amount currently estimated by VMU),

and (iii) a class representative payment not to exceed \$15,000, resulting in a "Net Settlement Fund."

43. Class A members who have previously not received ten dollars (\$10) of free starter airtime and who complete the claims process set forth at www.vmclasssettlement.com or by calling 888-XXX-XXXX will be given an automatic airtime credit in the amount of \$7.50, unless the Net Settlement Fund is insufficient to cover all claims against such Fund, in which case the credits will be prorated among the eligible claimants. If there is a balance left in the Settlement Fund, such amounts revert to VMU.

44. Claims shall be made by Class A members by either (i) electronically submitting a claim electronically to VMU through www.vmclasssettlement.com, or (ii) through a toll-free telephone number, in a form and manner described in a Toll-Free Telephone Number Protocol to be agreed to by the parties, or in the event of a disagreement subject to the approval of the Court. It is understood that to be in Class A, a class member must be a current VMU customer on the date of the distribution of the credits provided for herein. If a Class A member ends his or her relationship with VMU prior to said date, he or she will be entitled to receive any and all benefits of Class B Membership.

- ***VM/Starter Airtime/Former Customers**

45. VMU will make available an airtime credit of \$20, good for six months after the Court issues an Order granting final approval of the Settlement, redeemable if the Class B member who is a former customer reactivates his/her VMU account. Alternatively, the Class B member who is a former customer can elect at their

option to receive a \$5.00 credit off any accessory item they purchase from the VMU website except for batteries and music docking stations, during the same six month period.

46. Any eligible Class B member who is a former customer and who wishes to claim either credit shall do so by submitting a claim telephonically at 888-XXX-YYYY.

- **Payment to Scott Nelson**

47. VMU will pay to Mr. Nelson for his individual claim and for his acting as the named representative of the Class an amount approved by the Court not to exceed \$15,000. Such amount will be paid to Class Counsel within twenty (20) days after entry of the Order finally approving the terms of this Settlement Agreement, with the understanding that said amount is refundable to VMU in the event the Court's approval is overturned due to an appeal by an objector.

- **Fees to Class Counsel**

48. VMU agrees to pay Class Counsel fees and costs approved by the Court, not to exceed five hundred twenty five thousand dollars (\$525,000) (which together with the payment to the Class representative shall not exceed 20% of the \$2.7 million Settlement Fund amount) ("Counsel Fees"). Counsel Fees will be payable within twenty (20) days after the entry of the Court's Order finally approving this Settlement Agreement, with the understanding that said amount is refundable to VMU in the event the Court's approval is overturned due to an appeal by an objector.

D. Risk of Non-Approval and Sunset Provision

49. VMU acknowledges that it will have or has issued certain credits prior to final Court approval of this Settlement, and that it accepts the risk of said non-approval.

50. All restrictions imposed in this Settlement on VMU shall expire at the end of five years from the date of entry of the Order granting the final approval of the Settlement.

51. In the event this Settlement Agreement is terminated pursuant to paragraph 56, VMU's obligation to perform the actions set forth in this Settlement Agreement shall be void.

E. Class Notice and Final Approval Hearing

52. As soon as reasonably practicable after this Settlement Agreement has been executed on behalf of all parties, the parties to this Settlement Agreement shall jointly apply for the Court's preliminary approval of the Settlement Agreement and entry of a proposed Order in substantially the form attached hereto as **Exhibit 2**, which proposed Order shall provide for approval of the Class Notice Program set forth in Section II-B above.

53. VMU will, 30 days prior to the Fairness Hearing, submit to the Court proof of service of the CAFA Notification and dissemination of Class Notice consistent with the terms of this Settlement Agreement.

54. An in-Court public hearing for the purposes of analyzing the fairness and adequacy of the Settlement Agreement (the "Fairness Hearing") shall be held on a date to be set by the Court in the Preliminary Approval Order. If after the Fairness Hearing the Court approves the Settlement, the Court shall enter an Order substantially in the form attached hereto as **Exhibit 4**. The entry of said Order shall release as against VMU and all Released Parties the claims of all Class Members, including plaintiff,

asserted in the Complaint, and shall also release any claims arising out of the initiation, prosecution, or resolution of the Action.

III. MISCELLANEOUS SETTLEMENT PROVISIONS

55. The terms and provisions of this Settlement Agreement may be amended, modified, or expanded only by written instrument executed by the parties or their counsel hereto, subject to subsequent approval by the Court.

56. The terms of the Settlement Agreement shall terminate at the sole option and discretion of Nelson or VMU if the Court rejects, modifies, or denies approval of any provision of this Settlement Agreement that the terminating party reasonably determines is material, unless subsequent agreement is reached by the parties hereto. The terminating party must exercise the option to withdraw from and terminate this Settlement Agreement, as provided in this subsection, no later than ten (10) days after receiving notice of the Order or ruling of the Court prompting the termination. If this Settlement Agreement is terminated pursuant to any of the subsections above, then:

(a) This Settlement Agreement shall be null and void and shall have no force or effect, and no party shall be bound by any of its terms;

(b) This Settlement Agreement and all negotiations, statements and proceedings relating to it shall be without prejudice to the rights of any party, each of whom shall be restored to their respective positions existing immediately before execution of this Settlement Agreement;

(c) VMU expressly and affirmatively reserves all defenses, arguments and motions as to all claims that have been or might later be asserted in this Action or any other related action;

(d) Nelson and Class Counsel expressly and affirmatively reserve all claims, arguments and motions as to all assertions that have been or might be later asserted in this Action or in any related action; and

(e) To the extent permitted by law and consistent with its limitations, neither this Settlement Agreement, nor the fact of its having been made, shall be admissible or entered into evidence.

57. Each of the attorneys executing this Settlement Agreement on behalf of one or more of the parties hereto warrants and represents that they have been duly authorized and empowered to execute this Settlement Agreement on behalf of their respective client or clients.

58. Nelson understands the merits of the claims, believes the settlement to be in the best interests of the Class, and is authorized to execute this Agreement on behalf of himself and proposed Class Members.

59. This Settlement Agreement, complete with its Exhibits, sets forth the entire agreement between Nelson and VMU with respect to its subject matter, and supersedes any prior agreement, understanding, or undertaking (written or oral) by and between the parties regarding the subject matter of this Settlement Agreement.

60. Notwithstanding any provision in this Settlement Agreement, the time period and/or dates described in this Settlement Agreement with respect to the Class Notice and the Fairness Hearing are subject to approval and/or change by an order of the Court without notice to Potential Settlement Class Members.

61. If the date for performance of any act required by or under this Settlement falls on a Saturday, Sunday, or Court holiday, that act may be performed on

the next business day with the same effect as if it had been performed on the day or within the period of time specified by or under this Settlement Agreement.

62. Neither Nelson nor VMU shall be deemed to be the drafter of this Settlement Agreement or of any particular provision thereof, nor shall they argue that any particular provision should be construed against its drafter or otherwise resort to the *contra proferentem* canon of construction.

63. If any provision, paragraph, section or other portion of this Settlement Agreement is found to be void, all remaining portions of this Settlement Agreement shall only remain in effect and be binding upon mutual agreement of all parties.

64. The parties expressly acknowledge and agree that this Settlement Agreement and its Exhibits, along with all related drafts, motions, pleadings, conversations, negotiations and correspondence, constitute an offer to compromise and a compromise within the meaning of Federal Rule of Evidence 408 and any equivalent rule of evidence of any State. In no event shall the Settlement Agreement, any of its provisions or any negotiations, drafts, statements or court proceedings relating to its provisions in any way be construed, offered or received into evidence as an admission of the validity of any claim or any fact alleged by Nelson in this Action or in any pending or subsequently-filed action, of any wrongdoing, fault, violation of law, or liability of any kind on the part of VMU, including each of its past, present and future stockholders, parents (including intermediate and ultimate parents), subsidiaries, affiliates, divisions, predecessors, successors and assigns, each of its past and present officers, directors, agents, employees, servants, attorneys, underwritings and insurers; each of its past and

present vendors, including all wholesale and/or retail distributors of VMU's services, advertising agents, public relations agents, and media consultants; and any other person or legal entity in privity with any of them ("Released Parties"), or an admission by them of any claim or allegation made in this Action or in any action, nor as an admission by Nelson or any Class member of the validity of any fact or defense asserted against them in this Action or in any action. Without limitation on the foregoing, nothing contained in this Settlement Agreement shall be given any form of *res judicata* or collateral estoppel effect against VMU or the Released Parties in any administrative or judicial forum or proceeding.

65. This Settlement Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective estates, heirs, successors and assigns. This Settlement Agreement shall not expand the rights of any person or entities who are not parties hereto or Released Parties, and no person or entity who is not a party to this Settlement Agreement or a Released Party shall acquire any rights hereunder, whether as purposed third-party beneficiary or otherwise.

66. This Settlement Agreement and any amendments thereto shall be governed by and interpreted according to the laws of the State of California, excluding its conflicts of laws provisions.

67. Any action to enforce this Agreement shall be commenced and maintained only in the United States District Court for the Southern District of California (San Diego). The Court shall retain continuing jurisdiction over the implementation, administration and conduct of the settlement and the interpretation, construction and enforcement of this Settlement Agreement.

68. The parties reserve the right, subject to the Court's approval, to make any reasonable extensions of time that might be necessary to carry out any of the provisions of this Settlement Agreement.

69. All monetary amounts contained and relating to this Settlement Agreement are in United States dollars.

70. The waiver by one party of any breach of this Settlement Agreement by another party shall not be deemed a waiver of any prior or subsequent breach of this Settlement Agreement.

71. If one party to this Settlement Agreement considers another party to be in breach of its obligations under this Settlement Agreement, that party must provide the breaching party with notice of this alleged breach and provide a reasonable opportunity to cure the breach before taking any actions to enforce any rights under this Settlement Agreement.

72. All documents in connection with this Settlement Agreement and the proceedings contemplated herein shall be delivered by overnight delivery service, addressed to the respective parties at the addresses set forth below. Documents address to VMU shall be provided to:

Peter Lurie, Esq.
Virgin Mobile USA, LLC
10 Independence Boulevard
Warren, New Jersey 07059

with a copy to:

Kenneth A. Plevan, Esq.
Skadden, Arps, Slate, Meagher & Flom LLP
Four Times Square
New York, New York 10036

Documents addressed to Nelson shall be provided to:

Rosner, Law & Mansfield LLP
10085 Carroll Canyon Road, Suite 100
San Diego, California 92131
Attn: Hallen D. Rosner, Esq.

73. Following the final dismissal of the Action, Nelson and his counsel, upon the request of VMU, shall promptly return or destroy any confidential documents and business records (and all copies of such documents in whatever form made or maintained) produced by VMU in this Action.

74. Except as otherwise specifically addressed in this Settlement Agreement, no party shall be liable for any costs or expenses incurred by or on behalf of another party in connection with this Settlement Agreement and the actions resolved hereby.

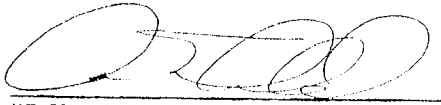
75. Prior to the final approval and settlement of this Settlement Agreement, the parties agree not to conduct public interviews, initiate contact with any media outlet, or publish or issue any public press release regarding the Action or this Settlement Agreement except as may be required by law, except that either party may respond to media inquiries to answer questions regarding the background of the Action or the terms of the Settlement.

76. This Settlement Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

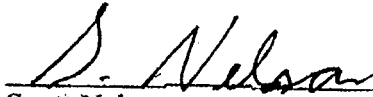
Thus executed on the dates indicated below.

ON BEHALF OF NELSON

Dated: March ^{13th} 2006



Hallen D. Rosner
Alan M. Mansfield
John W. Hanson
Rosner, Law & Mansfield LLP
10085 Carroll Canyon Road, Suite 100
San Diego, California 92131

 3-8-2006
Scott Nelson

ON BEHALF OF VIRGIN MOBILE USA, LLC

Dated: March __, 2006

Peter Lurie
General Counsel
Virgin Mobile USA, LLC
10 Independence Boulevard
Warren, New Jersey 07059

This executed on the dates indicated below.

ON BEHALF OF NELSON

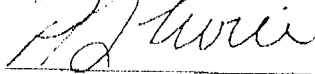
Dated: March __, 2006

Hallen D. Rosner
Alan M. Mansfield
John W. Hanson
Rosner, Law & Mansfield LLP
10085 Carroll Canyon Road, Suite 100
San Diego, California 92131

Scott Nelson

ON BEHALF OF VIRGIN MOBILE USA, LLC

Dated: March __, 2006



Peter Lurie
General Counsel
Virgin Mobile USA, LLC
10 Independence Boulevard
Warren, New Jersey 07059

EXHIBIT 1

EXHIBIT 1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

----- X
SCOTT NELSON, INDIVIDUALLY and On Case No. 05cv1594 AJB
Behalf Of All Other Similarly Situated :
 :
Plaintiff, :
 :
- against - :
 :
VIRGIN MOBILE USA, LLC, and VIRGIN :
MOBILE USA, INC. :
 :
Defendant. :
 :
----- X

TO: ALL CURRENT AND FORMER CUSTOMERS OF VIRGIN MOBILE USA WHO EITHER: (1) WERE CHARGED FOR CALLS MADE TO VIRGIN MOBILE USA "AT YOUR SERVICE" BY DIALING *VM OR *86; OR (2) PURCHASED THE HANDSETS SPECIFIED BELOW THAT PROMISED A \$10.00 STARTER AIRTIME CREDIT AND DID NOT RECEIVE THE \$10.00 STARTER AIRTIME CREDIT.

IF YOU FALL WITHIN EITHER OF THE ABOVE GROUPS YOU COULD RECEIVE MONETARY BENEFITS IN A CLASS ACTION SETTLEMENT. YOUR LEGAL RIGHTS ARE AFFECTED BY THIS SETTLEMENT WHETHER YOU ACT OR DON'T ACT. THIS IS A FEDERAL COURT AUTHORIZED NOTICE SO PLEASE READ THIS NOTICE CAREFULLY.

The purpose of this Notice is to inform class members of a proposed settlement of this class action lawsuit (the "Action"), pending before the Honorable Anthony J. Battaglia in the United States District Court for the Southern District of California (the "Court"), and to explain their options. The parties have consented to, and the Court has ordered under 28 U.S.C. Section 636(c) that, Magistrate Judge Anthony Battaglia be the Judge assigned to this matter for all purposes, including for the Fairness Hearing. The full details of this settlement are contained in

a Settlement Agreement dated March 15, 2006 (“Agreement”) that has been filed with the Court and is available to review at www.vmclasssettlement.com.

This Notice is also to inform you of a hearing to be held by the Court to consider whether to approve this settlement as fair and reasonable. The Court still has to decide whether to approve this settlement and consider any comments of Class members. The hearing to consider whether the proposed settlement should be approved and the class finally certified (the “Fairness Hearing”) will be held on June 26, 2006, at 10:00 a.m. in the Courtroom of the Hon. Anthony J. Battaglia, located at 940 Front Street, San Diego, California 92101. **The deadline for you to make any comments about the settlement, or to opt out of the settlement, is June 12, 2006.**

This Notice explains the background of the Action, the settlement, the benefits available, eligibility, procedures and deadlines to obtain these benefits, and your legal rights and options.

1. What Is this Action About?

Plaintiff (the individual who filed this Action) alleges that since April 5, 2005, Virgin Mobile USA, LLC (“Virgin Mobile”) did not provide a starter airtime credit of \$10.00 to customers who purchased the following models of mobile phones that advertised on their packaging that the purchaser was entitled to ten dollars (\$10) of free starter airtime: The Super Model, The Party Animal, Vox 8500, the K-7 Rave, Slider V5, K9, Flasher V7 and Vox 8610 (the “Handsets”).

In addition, plaintiff alleges that since May 2005 Virgin Mobile improperly billed customers for making calls to Virgin Mobile At Your Service from their handsets by dialing *VM or *86. Prior to May 2005, calls using this short code had been toll-free.

Present and former Virgin Mobile customers who either (1) purchased the Handsets listed above but did not receive a starter airtime credit of \$10.00 or (2) were billed for calls to Virgin Mobile At Your Service by dialing *VM, are referred to in this Notice as the "Class".

Virgin Mobile denies that it did anything wrong or that its practices are the proper subject of a lawsuit by Plaintiff or any members of the Class. You can review a copy of the Class Action Complaint and Answer at www.vmclasssettlement.com.

The Court has not ruled on the merits of these claims or defenses in favor of either side. Instead, both sides agreed to a settlement.

2. What Are the Settlement Terms?

(1) If you are a current customer of Virgin Mobile who purchased one of the Handsets listed above but did not receive a starter airtime credit of \$10.00, and you timely file a claim, you can receive a \$7.50 account credit for airtime use (possibly subject to proration). Virgin Mobile is establishing a \$2.7 million Settlement Fund for funding the starter airtime credits for current customers referred to above. The account credit for \$7.50 for future airtime use may be adjusted if claims exceed \$1.985 million; please see discussion below.

IMPORTANT: If your Virgin Mobile service is terminated before this starter airtime credit is provided to you, you may still elect one of the two options available to former customers (described below). If you cancel your service, call 888-XXX-YYYY for more information or to elect one of the two options for former customers.

(2) If you are a current customer of Virgin Mobile as of April 30, 2006 and were billed for *VM charges, you will receive an automatic credit of all *VM charges previously billed. **You do not need to submit a claim form to receive this credit, and it will show up automatically on your customer account statement before May 15, 2006.**

(3) If you are an eligible former Virgin Mobile customer and either (1) purchased one of Handsets listed above and did not receive the \$10.00 starter airtime credit described on the handset packaging, or (2) were billed calls to Virgin Mobile “At Your Service” by dialing *VM, and you timely file a claim, at your option, you will receive either an airtime credit of \$20.00 if you reactivate your Virgin Mobile service (Virgin Mobile will waive any activation fees) or a \$5.00 credit off any accessory item sold at www.virginmobileusa.com except for batteries or music docking stations.

Virgin Mobile has also agreed to make certain changes regarding the minimum free starter airtime amount that it will provide and the disclosure of free starter airtime. In addition, Virgin Mobile has agreed that it will not charge for calls to Virgin Mobile “At Your Service” by dialing *VM for at least two years, and then only after disclosing any such change. These changes are described more fully in the Settlement Agreement.

Class Counsel will request the Court to approve reimbursement of their attorneys’ fees and expenses for prosecuting this Action, as well as payment to the named class representative, in a total amount not to exceed 20% of the Settlement Fund. These amounts were negotiated and agreed to only after the Court confirmed that the other terms of the settlement had been agreed to by the parties, and is subject to Court review and approval. Virgin Mobile has agreed not to oppose these fees and expenses. Virgin Mobile has also agreed to separately pay the third-party costs to give notice of and administer this settlement, and up to \$175,000 of these costs will also reduce the Settlement Fund. Both of these amounts may reduce the amount of the \$7.50 credit for starter airtime, but not the other settlement benefits, and only if the total amount of the starter airtime claims exceed \$1.985 million.

If you fall within the above definition of the Class, and would like to learn more information about the terms of the settlement, you may either go to www.vmcclasssettlement.com or call 888-XXX-YYYY. To file a claim, you should follow the procedure set out in Section 4 below.

The Court has preliminarily certified the Class for settlement purposes and has preliminarily approved the terms of this settlement as fair, reasonable and adequate, subject to receiving further information from Class Counsel and after considering the views, if any, expressed by the Class members at the Fairness Hearing. The class representative and Class Counsel think the settlement is best for everyone who is a member of the Class.

3. What Happens if the Court Approves this Settlement?

If the Court approves the settlement and you decide to remain a member of the Class, you will be eligible for the benefits set forth above. In exchange, the Court will enter a Judgment that prevents you and all other Class members from suing for or continuing with all claims asserted in the Complaint arising out of these charges, as well as arising out of the prosecution and resolution of this Action. Except for those Class members who timely and validly opt out of the settlement (see below), if this Judgment is entered you and all other Class members will have, fully, finally, and forever released, relinquished, and discharged all claims asserted in the Complaint against Virgin Mobile and all "Released Persons" (see the Settlement Agreement for a description of such persons) arising out of (1) charges for calls to Virgin Mobile "At Your Service" by dialing *VM, or (2) Virgin Mobile's failure to provide a \$10.00 starter airtime credit on the certain of the handsets listed above between April 2005 and the date this settlement is approved, as well as any claims against plaintiff and Class Counsel arising out of the initiation, prosecution or resolution of this Action. This Judgment shall apply to you and

bind both you and all the other members of the Class who do not opt out, even if you do not submit a Claim.

4. How And When Will I Get This Credit or Benefit?

To make a claim under this settlement, follow the procedures outlined below.

(1) If you are a former Virgin Mobile customer, you may claim and select either the \$20.00 airtime reactivation credit or the \$5.00 accessory product credit by contacting 888-XXX-YYYY. You may claim one of these benefits at any time up until six months after final approval of the settlement, or approximately December 2006. You can check out www.vmclasssettlement.com for updates on this deadline.

(2) If you are a current customer who wishes to make a claim for the starter airtime credit, you must fill out a Claim Form, located at www.vmclasssettlement.com, or submit a claim over the phone by contacting 888-XXX-YYYY. If you submit a Claim Form, read or listen to the instructions carefully. Your claim **must be submitted after April 30, 2006 and on or before August 15, 2006**. The parties and/or their attorneys cannot assume responsibility for Claim Forms that are not completed. The \$7.50 airtime credit (which as explained above is possibly subject to adjustment if the claims exceed \$1.985 million) will be provided to you if the settlement is finally approved by the Court and, if there are any appeals, after they are resolved. It is uncertain how long this approval process will take, so please be patient. Updates on the status of the settlement will be posted at www.vmclasssettlement.com, so you can check that website for periodic updates. If your Virgin Mobile service is terminated before you receive the starter airtime credit, you may still elect one of the above two options available to former customers (a \$20.00 airtime credit upon reactivation or a \$5.00 credit off any accessory item sold on the Virgin Mobile USA website except batteries and music docking stations) during the period these options are available. If you change your e-mail address, postal mailing address or

telephone number after submitting a claim, please immediately notify Virgin Mobile at 1-888-XXX-YYYY so your records can be updated.

(3) If you are a current customer who is eligible for a *VM credit, you do not need to complete a claim form or take any other action. Virgin Mobile will be issuing the *VM credits to current customers by May 15, 2006, and you do not need to fill out a Claim Form to get this credit. If your Virgin Mobile service is terminated before you receive the *VM credit, you may still elect one of the above two options available to former customers (a \$20.00 airtime credit upon reactivation or a \$5.00 credit on certain accessory items sold on the Virgin Mobile USA website) during the period said options are available. If you cancel your service, call 888-XXX-YYYY for more information or to elect one of the two options available to former customers.

If you have any questions about filling out the Claim Form, you can check out the website or call 888-XXX-YYYY for more information.

5. Who Is the Class Representative and Class Counsel?

The Court has appointed Scott Nelson to act as class representative. The following law firm has also been appointed to act as counsel for the class ("Class Counsel"):

ROSNER, LAW & MANSFIELD LLP
Alan M. Mansfield
John W. Hanson
10085 Carroll Canyon Road, Suite 100
San Diego, California 92131

You may contact Class Counsel in writing if you have any more questions about this settlement or your options. 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.

6. What Are My Options regarding this Settlement?

You have three options as part of this settlement: (1) participate in the settlement as explained above; (2) object to the terms of the settlement; or (3) decide not to participate in the settlement and pursue your own individual claims. If you do not do either (1), (2), or (3), you will get none of the benefits under the settlement, you will not be able to object to the settlement terms, and you will not be able to start, continue with or be part of a lawsuit involving these claims ever again.

Option 1 -- If you want to participate in the settlement, you don't need to do anything other than submit a claim.

Option 2 -- If you don't like the settlement and want to tell the Court what you don't like about either all or part of it, you may object to the proposed settlement. If you choose this option, you can give the reasons why you think the Court should not approve the settlement by sending a letter saying that you object to this settlement and the reasons why **no later than June 12, 2006**, along with some form of proof that you are a Class member such as your Virgin Mobile telephone number. Be sure to include in your letter the case name and number, your name, address and Virgin Mobile telephone number, your signature, and the specific reasons you object to the settlement.

You must send this letter and proof to the Court Clerk, located at 940 Front Street, San Diego, California 92101. Copies of objections and notices of intention to appear must also be sent to:

Rosner Law & Mansfield LLP
John W. Hanson, Esq.
10085 Carroll Canyon Road,
Suite 100
San Diego, California 92131

Class Counsel

Kenneth Plevan, Esq.
Skadden, Arps, Slate, Meagher & Flam LLP
Four Times Square
New York, NY 10036

Counsel for Virgin Mobile

Objections must be actually **filed and received** by the June 12, 2006 deadline. As long as your objection was received on time, the Court will consider it.

If you send in an objection you don't have to come to Court to talk about it, as Class Counsel will answer any questions the Court may have. You are welcome to do so at your own expense. However, if you wish to appear at the Fairness Hearing to talk about the fairness of the Agreement, you must also note that fact in your objection and both file with the Court and send to both counsel a "Notice of Intention To Appear", containing the above information.

The Court will hold the Fairness Hearing **on June 26, 2006** at 10:00 a.m. at the United States District Court for the Southern District of California, located at 940 Front Street, San Diego, California 92101, to consider whether to finally approve certification of the Class, and whether the settlement of the Action, including the payment to Class Counsel and the Class Representative, is fair, reasonable and adequate. If there are any written objections, the Court will also consider them at that time. The Court will also listen to any Class members who have asked to speak at the Fairness Hearing. After the hearing, the Court will decide whether to approve the settlement. If your objection is overruled, you will still be bound by the terms of the settlement.

Option 3 -- If you don't want the benefits under this settlement but want to keep the right to bring a claim against Virgin Mobile for these charges, you must "opt out" of the settlement. If you elect this option, you will **not** be able to object to the settlement and you will **not** get any benefits under this settlement. Do not submit a Claim Form to ask for any benefits if you elect this option. You will not be legally bound by anything that happens in this lawsuit and you may proceed in the future with an individual lawsuit about the issues in this case.

If you want to opt out, you must send a letter by mail saying that you want to be excluded from the settlement of this case. Send this letter to: Virgin Mobile Settlement Administrator, The Garden City Group, Inc., 105 Maxess Road, Melville, NY 11747, Attn: Patrick M. Passarella. Be sure to include your name, address, Virgin Mobile telephone number and signature. The exclusion deadline requires all letter requests for exclusion must be **postmarked by no later than June 12, 2006**. If you exclude yourself, you have no basis to object to the settlement because the case no longer affects you, and you cannot speak at the Fairness Hearing or appeal any ruling of the Court.

If you wish to obtain more information about your options or review a copy of the Settlement Agreement, you may do so by writing to Class Counsel at the address set forth above or download a copy of the relevant documents at www.vmclasssettlement.com

7. How Do I Get More Information?

This Notice summarizes the proposed settlement. You may discuss your options with your own attorney, and you may (but do not need to) appear at the Fairness Hearing through your own attorney at your own expense. For more detailed information, you may also request a copy of the Agreement in writing from Class Counsel, download a copy at www.vmclasssettlement.com, or examine the Court's file during regular business hours. Answers to common questions about the settlement, how to fill out the Claim Form or make a claim, plus other information to help you determine whether you are a Class member and whether you are eligible for a payment is available by contacting 888-XXX-YYYY toll free or at [www.vmclasssettlement.com/frequently asked questions](http://www.vmclasssettlement.com/frequently%20asked%20questions). **PLEASE DO NOT CONTACT**

THE COURT.

Dated: March __, 2006

Honorable Anthony J. Battaglia
United States Magistrate Judge

EXHIBIT 2

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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 SCOTT NELSON, Individually and on Behalf of
12 All Others Similarly Situated,

13 Plaintiff,

14 vs.

15 VIRGIN MOBILE USA, L.L.C., and
16 VIRGIN MOBILE USA, INC.,

17 Defendants.
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Case No.: 05CV1594 AJB

CLASS ACTION

**[PROPOSED] ORDER PRELIMINARILY
APPROVING SETTLEMENT AND CLASS
NOTICE PROGRAM**

Magistrate Judge: Hon. Anthony J. Battaglia

21 WHEREAS, the Court has reviewed the Settlement Agreement (the "Agreement"), that has
22 been entered by and among plaintiff and defendants, and

23 WHEREAS, the Court has reviewed the papers submitted in support of Joint Application for
24 Preliminary Approval of Settlement; and good cause appearing therefor,

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1 IT IS HEREBY ORDERED as follows:

2 1. For purposes of this Order, the Court adopts all defined terms as set forth in the
3 Agreement, attached hereto as Exhibit A, which Agreement is incorporated by reference herein.

4 2. The Court preliminarily approves the settlement of this action on the terms set forth in
5 the Agreement as being fair, just, reasonable, and adequate to the Members of the Class, and subject
6 to further consideration at the final approval hearing described below after distribution of notice to
7 the Class Members as set forth below.

8 3. The Court approves as to form and content for distribution to the Settlement Class
9 Members the Notice of Proposed Class Action Settlement and Settlement Hearing (the "Notice"
10 (Agreement, Ex. 1)), the Summary Notice of Class Action Settlement ("Summary Notice"
11 (Agreement Ex.3)), the website, e-mail, postcard and text mail messages as described in paragraph 31
12 of the Agreement, all of which are to be distributed substantially in the forms attached to the
13 Agreement and as set forth in the Agreement.

14 4. The Court provisionally certifies the Class for settlement purposes only, finding that
15 all of the requirements for certification of the Class as set forth in Fed. R. Civ. P. 23 are satisfied
16 based upon the allegations of the Complaint and the evidence provided to the Court, subject to further
17 consideration at the Fairness Hearing after distribution of notice to the Class Members as set forth
18 above.

19 5. The website and toll-free number are to be fully operational no later than April 30,
20 2006. The email, text message and post card notices are to be disseminated by VMU by no later than
21 May 8, 2006. VMU shall also cause to be published the Summary Notice once a week for two
22 consecutive weeks, completed no later than May 8, in the national edition of *USA Today*.

23 6. The Court finds that the class notice program described in the Agreement and
24 disseminated as set forth above constitutes the best notice practicable under the circumstances to the
25 Class Members and meets the requirements of Federal Rules of Civil Procedure Rule 23(e) and due
26 process under the United States Constitution and any other applicable law and shall constitute due
27 and sufficient notice to all persons entitled thereto.
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1 7. Any Class Member who might object to the proposed settlement set forth in the
2 Stipulation shall have a right to appear and be heard at the Fairness Hearing. No later than June 12,
3 2006, any such person must file with the Court and serve upon Class Counsel and Defendants'
4 Counsel a written notice of objection and any written statement opposing the settlement. The manner
5 and form by which a notice of objection must be prepared, filed, and delivered is stated in the Notice
6 and Summary Notice. Only Class Members who have timely filed and delivered properly completed
7 written notices of objection will be entitled to be heard at the Fairness Hearing, unless the Court
8 orders otherwise.

9 8. The deadline for submitting requests for exclusion from the Class shall be June 12,
10 2006. To be valid, all requests for exclusion must be postmarked by that deadline. Except as
11 otherwise provided in the Agreement, the deadline for submitting claims shall be August 15, 2006.

12 9. No later than May 15, 2006, any documents the parties wish to file supporting the
13 settlement shall be served and filed with the Court. Any reply memorandum addressing any of the
14 objections timely and validly filed pursuant to paragraph 7 of this Order, if any, shall be served and
15 filed with the Court no later than June 19, 2006.

16 10. The Fairness Hearing will be held on June 26, 2006, at 10:00 a.m., in this Court for the
17 purpose of determining whether the proposed settlement of the action on the terms set forth in the
18 Agreement should be approved as fair, reasonable, and adequate to the Class members, whether the
19 Class should be finally certified for settlement purposes and whether the Order finally approving the
20 settlement and dismissing the Action with prejudice should be entered.

21 11. The Order finally approving the settlement, if entered, will permanently bar and enjoin
22 Plaintiff, Released Persons, and all Members of the Class from instituting or prosecuting, in any
23 capacity, any action or proceeding that involves any of the claims asserted in the Action, as well as
24 any claims any Released Parties might have against either Plaintiff or Class Counsel arising out of the
25 notification, publication, prosecution, or resolution of this Action and the claims asserted herein. To
26 the fullest extent of the Court's powers to do so as permitted by law, all persons who have any such
27 claims are hereby restrained and enjoined from prosecuting such claims pending determination of
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1 whether to enter the final Order approving settlement, or from taking any action that may undermine
2 or hinder the consideration of the Settlement by the Court.

3 12. The Court may, for good cause, extend any of the deadlines set forth in this Order
4 without further notice to Class Members. The Court may also adjourn or continue the Fairness
5 Hearing without further notice to Class Members.

6 **IT IS SO ORDERED.**

7 DATED: March _____, 2006

8 _____
9 Hon Anthony J. Battaglia
10 U.S. Magistrate Judge

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EXHIBIT 3

EXHIBIT 3

Legal Notice

U.S. DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA
Case No. 05vc1594 AJB

TO: ALL CURRENT AND FORMER CUSTOMERS OF VIRGIN MOBILE USA WHO AFTER MARCH 2005 ACTIVATED CERTAIN HANDSETS AND DID NOT RECEIVE \$10.00 STARTER AIRTIME CREDITS OR WERE CHARGED FOR CALLS MADE TO VIRGIN MOBILE "AT YOUR SERVICE" BY DIALING *VM

READ THIS NOTICE CAREFULLY. YOUR LEGAL RIGHTS MAY BE AFFECTED.

A settlement of the class action *Nelson v. Virgin Mobile USA, LLC et. al* ("Virgin Mobile") has been reached. The action alleges that after April 5, 2005, Virgin Mobile did not provide a starter airtime credit of \$10.00 to customers who activated certain mobile phones that advertised such a credit (the "Starter Airtime Credit"). The action also alleges that since May 2005, Virgin Mobile billed its customers who made calls to Virgin Mobile "At Your Service" by dialing *VM, though such calls were previously toll-free (the "*VM Charges"). Virgin Mobile denies these allegations. The Court has not ruled on the merits of these claims or defenses.

This settlement provides that eligible current customers who did not receive the Starter Airtime Credit can receive a \$7.50 account credit for airtime use (possibly subject to proration) from a \$2.7 million fund ("Settlement Fund"), and that eligible current customers who incurred *VM Charges will receive an account credit for future airtime use equal to the charges they incurred ("*VM Credit"). The settlement also provides that former customers who are eligible will, at their option, receive either an airtime credit for \$20.00 if they reactivate their Virgin Mobile service (with all reactivation fees waived) or a \$5.00 credit off certain accessory items sold at www.virginmobileusa.com.

Current customers who are eligible for the *VM credit will automatically receive this credit. Current customers who are eligible for the Starter Airtime Credit must file a claim after

April 30, 2006 and on or before August 15, 2006 at (i) at www.vmcasssettlement.com or (ii) by calling the toll free number 888-XXX-XXXX. Former customers must call the same toll free number within six months (estimated to be December 31, 2006) after the Court's final approval to participate in the settlement.

Class Counsel is requesting the Court to approve reimbursement of their attorneys' fees and expenses for prosecuting this Action, as well as payment to the named class representative, in a total amount not to exceed 20% of the Settlement Fund, which amount will reduce the Settlement Fund. Virgin Mobile has also agreed to separately pay the third party costs to give notice of and administer this settlement, although up to \$175,000 of these costs will also reduce the Settlement Fund.

A hearing will be held by the Court to consider the fairness, reasonableness, and adequacy of the proposed settlement on Monday, June 26, 2006, at 10:00 a.m., at 940 Front Street, San Diego, California 92101. If the settlement is approved the Court will enter a Judgment releasing and enjoining from further prosecution all claims arising out of such allegations or out of the prosecution and resolution of this Action. The parties have consented to, and the Court has ordered under 28 U.S.C. Section 636(c) that, Magistrate Judge Anthony Battaglia be the Judge assigned to this matter for all purposes, including for the Fairness Hearing.

You may obtain more detailed information about the settlement at www.vmcasssettlement.com or by calling 888-XXX-XXXX.

To be excluded from the settlement, you must do so in writing by stating you are requesting exclusion and listing the case name and number, your name, address, Virgin Mobile telephone number and signature, and sending this exclusion request to the Settlement Administrator, Virgin Mobile Settlement Administrator, The Garden City Group, Inc., 105

Maxess Road, Melville, NY 11747, Attn: Patrick M. Passarella. To be valid, requests for exclusion must be postmarked by no later than June 12, 2006.

If you wish to object to the proposed settlement, you must file your specific written objections, along with some form of proof that you are a Class member and your Virgin Mobile telephone number, by no later than June 12, 2006, with the Court Clerk, 940 Front Street, San Diego, California 92101. You must also include the case name and number, your name, address, and signature. If you wish to appear at the hearing, you must also state that in your objection and file a statement of your intention to do so with the Court Clerk. Copies of these written objections and notices of intention to appear must also be served upon:

Rosner Law & Mansfield LLP
Alan M. Mansfield, Esq.
10085 Carroll Canyon Road,
Suite 100
San Diego, California 92131

Kenneth Plevan, Esq.
Skadden, Arps, Slate, Meagher &
Flom LLP
Four Times Square
New York, NY 10036

Class Counsel

Counsel for Virgin Mobile

Objections must be **actually received** by both counsel by the June 12, 2006 deadline.

DO NOT CONTACT THE COURT FOR INFORMATION.

DATED: March __, 2006.

HONORABLE ANTHONY J. BATTAGLIA
U.S MAGISTRATE JUDGE

EXHIBIT 4

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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 SCOTT NELSON, Individually and on Behalf of
12 All Others Similarly Situated,

13 Plaintiff,

14 vs.

15 VIRGIN MOBILE USA, L.L.C., and
16 VIRGIN MOBILE USA, INC.,

17 Defendants.
18

Case No.: 05CV1594 AJB

CLASS ACTION

[PROPOSED] ORDER GRANTING FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT PURSUANT TO AGREEMENT
AND JUDGMENT OF DISMISSAL

Date: June 26, 2006

Time: 10:00 a.m.

Courtroom: Hon. Anthony J. Battaglia

19 WHEREAS, Plaintiff and Defendants have entered into a Settlement Agreement, a copy of
20 which (without exhibits) is attached hereto as Exhibit 1 ("Agreement");

21 WHEREAS, on March ____, 2006, upon review of the Settlement Agreement and
22 consideration of the Application for Order Preliminarily Approving Settlement and Class Notice
23 Program, the Court issued a preliminary Approval Order setting this hearing date;

24 WHEREAS, at the Fairness Hearing on June 27, 2006 (which this Court presided over with
25 the consent of the parties and by previous Order of the Court pursuant to 28 U.S.C. Section 636(c),
26 notice of which was given by the parties to all interested persons), the Court granted the Motion for
27 Final Approval of the Settlement Agreement, finding the settlement to be fair, reasonable, and
28 adequate with respect to the Class;

1 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

- 2 1. Capitalized terms used in this Order shall have the same meaning as defined in the
3 Agreement;
- 4 2. The terms of the settlement as set forth in the Agreement are approved as being fair,
5 reasonable, and adequate to the Class Members, and any objections thereto are either
6 invalid or overruled. The Court also finally approves its provisional certification of
7 the Class for settlement purposes, finding that all the requirements for class
8 certification as set forth in Fed. R. Civ. P. 23 are satisfied.
- 9 3. The Court approves the payment to the Class Representative in the amount set forth in the
10 Agreement. The Court also finds reasonable the payment of fees and reimbursement of costs
11 to the Class Counsel in the amount of \$ _____. Both amounts total 20% of the
12 Settlement Fund, which the Court finds reasonable. Such amounts are to be paid by VMU in
13 accordance with the terms of the Agreement.
- 14 4. The parties shall consummate the settlement in accordance with all of the terms and
15 conditions set forth in the Agreement, consistent with the Preliminary Approval Order
16 previously entered by the Court, and the Agreement.
- 17 5. A Judgment in this Action is to be entered by the Clerk of the Court dismissing the Action
18 with prejudice, with each party to bear its respective fees and costs, except as set forth in the
19 Agreement.
- 20 6. This Order permanently releases, bars and enjoins Plaintiff and all Class Members who have
21 not filed a timely and valid request for exclusion from instituting or prosecuting, in any
22 capacity, any action or proceeding that involves any of the claims asserted in the Action, as
23 well as any claims either they or any of the Released Persons might have against either
24 Plaintiff or Class Counsel arising out of the notification, publication, prosecution, or
25 resolution of this action and the claims asserted herein, including, but not limited to, any
26 claims of defamation, abuse of process or malicious prosecution.

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1 7. The Court shall retain continuing jurisdiction over all matters relating to the administration,
2 interpretation, consummation, and enforcement of this settlement, as well as continuing
3 jurisdiction to resolve any disputes related thereto.

4 DATED: June _____, 2006

5 _____
6 Hon Anthony J. Battaglia
7 U.S. Magistrate Judge
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