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14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

15 **FOR THE COUNTY OF SACRAMENTO**

16 STATE OF CALIFORNIA et al., *ex rel.* OnTheGo  
Wireless, LLC

17 Plaintiffs,

18 vs.

19 CELLCO PARTNERSHIP, doing business as  
20 VERIZON WIRELESS, et al.

21 Defendants.

Case No. 34-2012-00127517

**[PUBLIC-REDACTED]**  
**NOTICE OF MOTION AND MOTION**  
**FOR APPROVAL OF SETTLEMENT**  
**WITH VERIZON; MEMORANDUM OF**  
**POINTS & AUTHORITIES**

Date: September 24, 2020  
Time: 11:00 a.m.  
Dept. 92 or 96, Hon. Judy Holzer Hersher

22 **Public - Redacts Materials from Conditionally Sealed Record**

**NOTICE OF MOTION AND MOTION**

**TO ALL PARTIES AND REAL PARTIES IN INTEREST:**

**PLEASE TAKE NOTICE THAT** on Thursday, September 24, 2020 at 11:00 a.m., or as soon thereafter as the matter may be heard, in Department 92 or 96 of the above-captioned court, located at 9605 Kiefer Boulevard in Sacramento, California, Plaintiff-Relator OnTheGo Wireless, LLC (“the Relator” or “OTG”) and intervening parties the Regents of the University of California, City of Chino, City of Corona, City of Fortuna, City of Fresno, City of Long Beach, City of Oxnard, City of Rancho Cucamonga, City of Ripon, City of Riverside, City of Sacramento, City of San Bernardino, City of San Mateo, City of Santa Rosa, City of Vernon, Los Angeles County, Marin County, Orange County, Riverside County, Sacramento County, San Bernardino County, Santa Cruz County, Sonoma County, Stanislaus County, Yuba County, San Diego Unified School District, Santa Ana Unified School District, Sonoma County Water Agency, Woodbridge Fire District, and the Board of Trustees of the California State University (“Intervenors,” and, collectively with Relator, “Plaintiffs”) will and hereby do move for an order approving a) the settlement with Cellco Partnership d/b/a Verizon Wireless (“Verizon”), pursuant to a settlement agreement between the parties and California Government Code section 12652(c)(1); and b) the settlement amounts, and bases for those settlement amounts, allocated among the Intervenors, the Non-Intervenors, the Relator, and the Relator’s counsel.

This motion is based on this Notice of Motion and Motion, the Memorandum of Points and Authorities, and the Declarations of Amanda Bonn, Steven M. Shepard, Ari Yampolsky, and Phillip Kline submitted herewith.

DATED: June 12, 2020

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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

After years of hard-fought litigation, *Qui Tam* Plaintiff OnTheGo Wireless LLC (“Relator” or “OTG”) has reached a settlement agreement with Verizon that will, if approved in connection with this motion, provide **\$68,231,673** to California government entities. This settlement amount represents a significant portion of the total revenues these California government entities paid Verizon for wireless services during the relevant period.

This settlement occurred after four years of active litigation, and after two day-long mediations before the Hon. Gary Feess. Judge Feess of Phillips ADR is a former federal judge on the United States District Court for the Central District of California, who (1) previously focused his private practice on defense of False Claims Act litigation prior to taking the bench and (2) gained extensive familiarity with the merits of this action in his successful mediation of the Sprint settlement.<sup>1</sup>

Since this case was filed in 2012, Relator, Intervenors, and their counsel have had to fight hard every step of the way to achieve this exceptional result in the face of overwhelming obstacles. Plaintiffs’ counsel invested more than **63,114 hours** and \$7,750,642.55 in costs in this case, all without any guarantee that they would prevail and be compensated. (Bonn Decl. ¶ 56.) Intervenors withstood a scorched-earth discovery campaign, which taxed the resources and time of hundreds of government employees. And Relator made personal sacrifices, losing all of its business providing outside optimization services to Verizon because Relator chose to pursue this case. Relator, Intervenors, and their counsel overcame incredible obstacles—each and every one of which made any recovery in this case costly to achieve and far from certain—to obtain a phenomenal result.

Based on their extraordinary efforts, Relator, Intervenors, and their counsel have achieved a settlement that is fair, reasonable, and in the best interests of Intervenors and Non-Intervenors alike. California entities will receive \$68,231,673 in the Verizon settlement. The allocation of those proceeds is based on relevant factors this Court has previously approved in connection with the Sprint settlement, including (1) each entity’s wireless spending with Verizon during the relevant

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<sup>1</sup> See <http://www.phillipsadr.com/bios/gary-feess/>.



1 period; (2) the increased discovery burdens borne by Intervenors compared to Non-Intervenors; and  
2 (3) whether or not Non-Intervening Customers “opt-in” and agree to be bound by the Settlement  
3 Agreement. Based on these factors, the settlement proceeds will be allocated among the following  
4 three groups, whose scope of release is outlined as follows:

- 5 • Intervenors: Thirty (30) Intervenors will sign the Settlement Agreement and  
6 participate as full parties, thereby releasing all claims within the scope of  
7 the release including their claims for breach of contract;
- 8 • Non-Intervenor Verizon Customers: Two-hundred-and-forty-eight (248)  
9 Non-Intervenor Customers, including the State of California, are allocated  
10 funds under the Settlement Agreement. The settling parties have agreed  
11 that a Non-Intervenor Customer may expressly agree in writing to be bound  
12 by the terms of the Settlement Agreement, in which case it will be subject  
13 to the full scope of the release and will receive its full settlement allocation.  
14 Non-Intervenor Customers who do not opt in will receive 90% of their  
15 settlement allocations and only their California False Claims Act (“CFCA”)  
claims will be released.
- Non-Intervenor Non-Customers: Twenty-eight (28) Non-Intervenors were  
named in the complaint but were not customers of Verizon during the  
relevant time period. These entities are not allocated any share of the  
settlement under the Settlement Agreement, as they have no damages. The  
Settlement Agreement releases *only* CFCA claims against Verizon on  
behalf of these Non-Intervenor Non-Customers, and not any common law  
or other claims.

16 (Shepard Decl. ¶¶ 14-16; Kline Decl. App’x C.)

17 Relator also seeks approval of a 43% relator’s share with respect to recoveries by Non-  
18 Intervenors pursuant to Section 12652(g)(3) of the Government Code. This amount is consistent  
19 with the CFCA and justified by Relator’s efforts in securing this exceptional recovery on behalf of  
20 Non-Intervenors against Verizon. It also ensures that Intervenors receive a 10% greater net  
21 allocation than Non-Intervenors (after accounting for Intervenors’ 8% contingency fee arrangement  
22 with lead counsel) to reward their significant efforts in participating in the case throughout  
23 discovery. The below chart shows the resulting gross and net settlement allocations for Intervenors  
24 and Non-Intervenor Customers:<sup>2</sup>

25 ///

26 ///

27 \_\_\_\_\_  
28 <sup>2</sup> (Kline Decl. App’x. C at 5.)

Entity	Gross Allocation	Relator's Share		Intervenor Contingent Fee	Net Allocation
<b>Intervenors (26)</b>	\$17,979,057	25%	\$4,494,764	\$1,438,325	\$12,045,968
<b>Non-Intervenors (161)</b>	\$50,252,615	43%	\$21,608,625	\$0	\$28,643,991
<b>Grand Totals</b>	<b>\$68,231,673</b>		<b>\$26,103,389</b>	<b>\$1,438,325</b>	<b>\$40,689,959</b>

Notably, the Office of the California Attorney General has indicated that, based on its review of the Settlement Agreement and Plaintiffs’ moving papers, it does not intend to oppose Relator’s request.

Finally, Relator’s counsel settled their claim for statutory attorneys’ fees and costs with Verizon in the amount of \$23,450,000. Plaintiffs do not anticipate that any Non-Intervenor will object to the settlement of Relator’s claim for fees and costs. However, should any Non-Intervenor object, the Court should approve such fees and costs as fair and reasonable. *United States ex rel. Killingsworth v. Northrop Corp.*, 25 F.3d 715, 725 (9th Cir. 1994) (directing district court faced with objection by non-intervening government entity to “hold a hearing to determine whether the proposed settlement fairly and reasonably allocates the settlement funds” including whether “the amount paid to [Relator] and his counsel is” a “fair appraisal of the value of his case and services rendered by his counsel”).

Even after accounting for the statutory attorneys’ fees and costs awarded in connection with the Sprint and T-Mobile settlements, Plaintiffs’ counsel have invested more than \$41,727,612.55 in statutory attorneys’ fees and costs in this action that have not been reimbursed. In connection with their request for fees in the Verizon and AT&T settlements, Plaintiffs’ counsel do not seek a multiplier on their lodestar, nor do they even seek to be fully compensated. Instead, Plaintiffs’ counsel seek to recover \$5,277,612.55 *less* than their as-yet unreimbursed attorneys’ fees and costs—with Verizon paying approximately two-thirds of that amount and AT&T paying the remaining third ( [REDACTED] ). (Bonn Decl. ¶ 57 & Tbl. 3.)

Relator respectfully requests that the Court approve the settlement in full.

1 **II. FACTUAL AND PROCEDURAL SUMMARY**

2 **A. Claims and Defenses**

3 Relator filed this case in 2012 under the *qui tam* provisions of the California False Claims  
4 Act (“the CFCA”), Cal. Gov’t Code § 12650 *et seq.* Relator filed suit on behalf of the State of  
5 California and approximately 300 California political subdivisions against the four largest wireless  
6 service providers – AT&T, Sprint, T-Mobile, and Verizon (collectively, “Defendants”).<sup>3</sup> Relator  
7 alleges that Defendants (1) contracted to deliver wireless services to Plaintiffs at the “lowest cost  
8 available” via “rate plan optimization” and (2) knowingly failed to do so, thereby overcharging  
9 Plaintiffs and violating the CFCA.

10 More specifically, Verizon first entered into a purchasing agreement, the California Wireless  
11 Contract (“CWC”) with the State of California in 2005. (Third Amended Complaint “TAC” ¶ 45.)  
12 Subsequently, in or around 2010, Plaintiffs allege that Verizon agreed to extend the terms and  
13 conditions of its Western States Contracting Alliance (“WSCA”) contracts—which it negotiated  
14 with Nevada—to the State of California, its agencies, and political subdivisions. (*Id.* ¶ 90.) Plaintiffs  
15 allege that the CWC, the WSCA contracts, and the corresponding contract(s) covering Verizon’s  
16 sales to California government entities, required Verizon to provide rate-plan optimization to  
17 “ensure that each subscriber is utilizing the most appropriate plan” based on the subscriber’s use of  
18 wireless services. (*Id.* ¶¶ 33, 60, 71.) According to Plaintiffs, rate-plan optimization, if performed,  
19 would have saved the government entities 20% or more on their wireless-services costs. (*Id.* ¶ 153.)  
20 By failing to provide rate-plan optimization on a quarterly basis, Plaintiffs contend that Verizon  
21 fraudulently overbilled the government entities and failed to provide service at the lowest cost  
22 available.

23  
24  
25 <sup>3</sup> In addition to this action, Verizon is also a defendant in *State of Nevada et al. ex rel. OnTheGo*  
26 *Wireless v. Cellco Partnership et al.*, 2d Judicial District Washoe County Case No. CV12-03093,  
27 filed December 12, 2012 (the “Nevada Action”). The State of Nevada filed a complaint in  
28 intervention in that action on February 27, 2019. The Settlement Agreement, attached to the  
declaration of Steven M. Shepard as Exhibit A, also settles the Nevada Action and is signed by the  
Nevada Attorney General’s Office. The Court is not being asked to make any decisions with respect  
to the Nevada Action.

1 Verizon has denied liability, arguing, among other things, that the contracts did not have the  
2 meaning Plaintiffs alleged, that Verizon did not act with scienter, that any alleged failure to provide  
3 optimization reports was not material, and that any damages, if any, would be speculative and  
4 minimal. In its October 21, 2019, verified Answer to the TAC, Verizon asserted that the government  
5 plaintiffs (1) waived any right to recovery, ratified Verizon’s conduct, or otherwise modified  
6 Verizon’s obligations; (2) failed to mitigate or avoid their damages; (3) were not parties to the  
7 contracts alleged; (4) failed to give notice to Verizon of the alleged breaches; (5) made performance  
8 impossible; and (6) consented to Verizon’s actions.<sup>4</sup>

9 In December 2015, 45 government entities intervened in the action and, in addition, brought  
10 additional common-law claims for breach of contract, unfair business practices, and unjust  
11 enrichment. The Intervenorers include the Regents of the University of California, the Trustees of  
12 the California State University,<sup>5</sup> the County of Sacramento, the City of Sacramento, and dozens of  
13 other local government entities. The remaining government entities on whose behalf Relator sued,  
14 including the State of California, did not intervene. Instead, these “Non-Intervenorers” relied on  
15 Relator to prosecute their claims. Fifteen (15) political subdivisions that initially intervened have  
16 since withdrawn their interventions. (Bonn Decl. ¶ 24.) For purposes of the settlement, and under  
17 the CFCA, they are treated as Non-Intervenorers.

18 Along with their CFCA claims, Intervenorers also asserted on their own behalf common-law  
19 claims predicated on Defendants’ failure to provide optimization, optimization reports, and the  
20 lowest cost available. Those claims include (1) unfair business practices in violation of Business  
21 and Professions Code section 17200 (Third Claim for Relief); (2) breach of written contract (Fourth  
22 Claim for Relief); and (3) unjust enrichment (Fifth Claim for Relief). (See TAC ¶¶ 193-207.)

23 In addition, Intervenorers amended their complaint in June 2019, for three reasons. (See ROA  
24 790, Plts.’ Mot. for Leave to Amend at 7 (describing amendments).) *First*, Intervenorers asserted an  
25 additional common-law claim for “Breach of Written Contract: Failure to Retain Records”—a claim

26 \_\_\_\_\_  
27 <sup>4</sup> See Affirmative Defense Nos. 4-7, 9-10, 12-14, and 27.

28 <sup>5</sup> The Trustees of the California State University intervened solely as to the common-law claims.

1 based on Verizon’s failure to comply with the recordkeeping requirements of the WSCA contracts  
2 (Seventh Cause of Action).<sup>6</sup> (*Id.*; *see also* TAC ¶¶ 218-25.) *Second*, Intervenor and Relator asserted  
3 an additional CFCA claim under Government Code section 12651(a)(8) based on Verizon’s  
4 discovery that it was “not performing optimization (and therefore not providing services at the  
5 ‘lowest cost available’)” and Verizon’s failure to “disclose[] this fact to the government.” (ROA  
6 790, Plts.’ Mot. for Leave to Amend at 7; *see also* TAC ¶¶ 208-17.) *Third*, Plaintiffs “add[ed] factual  
7 allegations regarding” Verizon’s “promises and representations to Government Plaintiffs that they  
8 could purchase, and in fact were purchasing, wireless services under the WSCA Contracts.”<sup>7</sup> (ROA  
9 790, Plts.’ Mot. for Leave to Amend at 7.)

10 Following the Complaint’s unsealing, briefing on Defendant’s demurrers, and the  
11 subsequent initiation of fact discovery in early 2017, this case was actively litigated for nearly three  
12 years prior to settlement.

13 **B. Efforts by Relator, Intervenor, and Counsel to Overcome Obstacles.**

14 As shown below, Relator, Intervenor, and their counsel made herculean efforts and  
15 sacrifices to achieve this settlement in the face of numerous and significant obstacles to recovery.

16 **1. Efforts to Overcome Discovery Obstacles**

17 Thirty Intervenor—many of whom, in turn, had dozens of decentralized departments  
18 responsible for wireless purchasing—collectively (1) collected and produced over 1 million  
19 documents from 915 separate custodians totaling 6,157,076 pages; (2) prepared over 4,000  
20 responses to Verizon’s interrogatories, requests for production, requests for admission, and written  
21 questions seeking detailed data and information about Intervenor’s wireless purchasing and  
22 practices over a 13-year-period; and (3) presented their current and former employees in 132  
23  
24

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25 <sup>6</sup> Because the claims described in this paragraph are common-law claims rather than CFCA claims,  
26 they are asserted by Intervenor solely on their own behalf, and not by Relator on behalf of Non-  
Intervenor.

27 <sup>7</sup> Plaintiffs also made edits relating to Government Plaintiffs who had withdrawn their intervention  
28 and the then-pending settlement with Sprint. (ROA 790, Plts.’ Mot. for Leave to Amend at 7 n.3.)

1 depositions that were either noticed by, cross-noticed by, or attended by Verizon's counsel. (Bonn  
2 Decl. ¶ 24-25 & n.11.)

3 The amount of time spent by Intervenors and counsel collecting documents, investigating  
4 the facts necessary to prepare written discovery responses, and preparing for depositions was  
5 extraordinary. Not only were there 30 separate Intervenors, but many of them had dozens or even  
6 hundreds of sub-divisions that made separate wireless purchasing decisions. For instance, while the  
7 California State University system is only technically a single Intervenor, 21 separate campuses plus  
8 the Chancellor's Office were involved in responding to discovery. (Bonn Decl. ¶ 24(c).) Many of  
9 those campuses, in turn, had further decentralized wireless purchasing among various departments.  
10 (*Id.*) As a result, the burdens on certain Intervenors were especially severe. For instance, the  
11 University of California Board of Regents alone had to prepare answers to 649 Requests for  
12 Admission (RFAs), while the California State University had to prepare responses to 116 RFAs.<sup>8</sup>  
13 (*Id.* at ¶ 24(d).) In yet another example, the University of California identified more than 650  
14 separate departments that had a role in independently purchasing and managing wireless services,  
15 which led Defendants to request the production of documents from low-level custodians spread out  
16 amongst hundreds of diffuse departments. (*Id.* ¶ 24(e).)

17 This Court bifurcated discovery into Phase I and Phase II. In addition to the 30 Intervenors,  
18 Phase I also included the State of California and eight other Non-Intervenors. In order to prepare  
19 for Phase I, Relator's counsel worked closely with the State AG's Office to identify and produce  
20 relevant documents and to identify and interview relevant witnesses. (Bonn Decl. ¶ 24(f).) Relator's  
21 counsel also took third-party document discovery from the remaining Non-Intervenors in Phase I.  
22 (*Id.*)

23 At the same time as Intervenors and counsel bore these extensive discovery obligations,  
24 Plaintiffs' counsel pressed Verizon to produce relevant discovery. Plaintiffs' counsel served seven  
25 sets of requests for production, six sets of special interrogatories, and one set of form interrogatories.

---

26  
27 <sup>8</sup> Although Intervenors prepared responses to all of Verizon's RFAs, the parties' agreement to stay  
28 discovery obviated the need to serve some of the RFA responses. (Bonn Decl. ¶ 24(b) n.11)

1 (*Id.* at ¶ 22(a) & n.10.) Plaintiffs and their counsel were required to engage in such extensive motion  
2 practice that bi-weekly (and sometimes even more frequent) calls with the Special Discovery Master  
3 were required. (*Id.* ¶ 27.) Through November 26, 2019, Plaintiffs filed 18 motions to compel that  
4 involved Verizon (in addition to responding to four motions to compel that Verizon filed against  
5 Plaintiffs). (*Id.*) These included motions to compel that Plaintiffs filed to rebuff meritless privilege  
6 objections that Verizon repeatedly and unsuccessfully asserted—motion practice that forced  
7 Verizon to produce many of its most damaging documents. (*Id.* at ¶ 22(e).) Plaintiffs’ counsel  
8 reviewed Verizon’s document production of 712,959 documents totaling approximately 4,039,745  
9 pages. (*Id.* at ¶ 22(d).) Plaintiffs also took depositions of 23 Verizon witnesses, resulting in damning  
10 admissions by Verizon’s employees that significantly increased Verizon’s risk. (*Id.* at ¶ 26.)

11 **2. Efforts to Overcome Data and Damages Obstacles**

12 In addition, this case demanded extensive data analysis in order to prove both liability and  
13 damages. The necessary data analysis was, as a technical matter, ferociously complicated, costly,  
14 and time-consuming. Simply obtaining the necessary data in the proper format was an ongoing effort  
15 that took *years* of discovery requests, conferring with Plaintiffs’ experts, filing multiple motions to  
16 compel, and engaging in extensive meet-and-confer discussions with Verizon. (Shepard Decl. ¶¶  
17 17-19.)

18 Once Verizon produced its data, Plaintiffs’ counsel and expert consultants spent hundreds  
19 of hours ingesting, organizing, and analyzing that data. (*Id.*) Plaintiffs’ counsel paid over \$3 million  
20 to a team of high-caliber experts who—in tandem with counsel’s extensive involvement and  
21 supervision—built the enormously complex damages models that this case required. (Bonn Decl. ¶  
22 48.) Three different expert teams worked as follows:<sup>9</sup>

- 23 • Data Processing: Data processing expert Philip Kline and his team ingested,  
24 validated, and organized the thousands of overlapping tables produced by  
25 Verizon and created a data key for each quarter’s rate plans, in which each  
quarter contained up to 99,534 rate plans that had to be analyzed. (There

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26 <sup>9</sup> This dollar amount also pertains to work done relating to the case against AT&T. Notably, these  
27 experts did not conduct significant work on the case against Sprint, and did no work on the T-Mobile  
28 case, as T-Mobile settled before substantially producing its billing and usage data.

1 were 52 quarters in the thirteen-year damages period.) Each of those rate  
2 plans, in turn, included nearly 100 relevant terms and conditions;

- 3 • **Statistical Modeling:** Statistician Bill Wecker generated a separate random  
4 sample of each California government entity’s billing and usage data for  
5 analysis and computed the final damages amounts;
- 6 • **Optimization Analysis:** Optimization expert Cameron Sowder, assisted by  
7 four staff employees, prepared hundreds of optimization reports for the  
8 billing and usage data in the sample quarters identified by Wecker. Mr.  
9 Sowder and his team also analyzed the hundreds of reports that Verizon had  
10 sent to the California government entities, in order to prepare to show that  
11 these reports did not qualify as “optimization” reports.

12 (Shepard Decl. ¶¶ 18-19.)

13 Each one of these steps of analysis was fraught with technical challenges. Successfully  
14 completing this critically-important effort required Plaintiffs’ counsel to work hand-in-hand with  
15 their experts, grapple with complicated logistical and technical data issues, meet-and-confer  
16 extensively with Verizon, and file numerous motions to compel.

### 17 **3. Efforts to Overcome Verizon’s Defenses**

18 Verizon asserted several defenses that could have wiped out Plaintiffs’ claims altogether, at  
19 summary judgment or trial, if credited by the Court or the jury. Verizon raised challenges to  
20 materiality, causation, and scienter—any one of which could have, if credited, resulted in a total  
21 loss to Plaintiffs.

22 *Demurrers.* Verizon, along with the other Defendants, filed three joint demurrers that  
23 Plaintiffs’ counsel successfully briefed and argued. Those demurrers challenged multiple aspects of  
24 Plaintiffs’ case, ranging from challenging Plaintiffs’ interpretation of the Master Contracts, to  
25 questioning whether the public disclosure bar applied, to asserting that Plaintiffs had failed to plead  
26 the requisite elements of the CFCA claim with particularity. (Yampolsky Decl. ¶ 18.) Plaintiffs’  
27 counsel overcame these demurrers in full. (*Id.*) Years later, when Plaintiffs sought to amend the  
28 Complaint to add allegations against Verizon based on facts learned in discovery, Plaintiffs’ counsel  
once again successfully briefed (1) a motion for leave to amend and (2) Verizon’s subsequent  
demurrer. (Bonn Decl. ¶¶ 27, 34.)

*Materiality.* Defendants including Verizon argued that Plaintiffs could not establish  
materiality because (1) many Intervenor did not specifically request “optimization reports”; (2)



1 some Intervenors hired third-party optimization firms; and (3) all Intervenors continued paying their  
2 wireless invoices after joining this lawsuit. (*Id.* ¶ 6.) Verizon argued that these facts established a  
3 lack of materiality under *Universal Health Servs. v. United States ex rel. Escobar*, 136 S. Ct. 1989,  
4 2003-04 (2016) (holding when “the Government regularly pays a particular type of claim in full,  
5 despite actual knowledge that certain requirements were violated, and has signaled no change in  
6 position, that is strong evidence that the requirements are not material”).

7 *Scienter.* Verizon argued that it did not act with the requisite scienter under the CFCA.  
8 Verizon attempted to advance several alternative interpretations of the WSCA contracts, including  
9 by arguing that: (a) optimization reports were only required to be sent to Nevada (the lead state that  
10 negotiated the WSCA contracts), not to government customers in California; (b) optimization  
11 reports only had to be sent when the customer specifically requested them; (c) “optimization” could  
12 have meant other things besides selecting the “lowest cost available” rate plan; and (d) the “lowest  
13 cost available” provision was prefatory and did not impose a binding obligation on Verizon. (Bonn  
14 Decl. ¶ 7.)

15 *Causation and Damages.* Verizon also raised several defenses relating to causation and  
16 damages. Verizon attempted to elicit testimony that California Government Customers did not  
17 always follow recommendations regarding wireless services that Verizon made. Verizon apparently  
18 intended to argue that (1) even if it had provided optimization reports, California Government  
19 Customers would not necessarily have accepted the “lowest cost available” rate plans and (2)  
20 therefore, Plaintiffs could not prove causation and non-speculative damages. (*Id.* ¶ 8.)

21 Plaintiffs disagree vehemently with Defendants’ arguments above. However, Relator,  
22 Intervenors, and counsel went to great lengths to gather discovery necessary to defeat these  
23 arguments. Continued litigation would carry the risk that the Court or jury might credit one or more  
24 such defenses, any one of which could have reduced Plaintiffs’ recovery to zero.

25 **C. Settlement Agreement with Verizon**

26 Given the litigation risks both sides faced, Verizon and Plaintiffs agreed to discuss  
27 settlement. Verizon and Plaintiffs participated in two day-long mediations on October 24, 2019 and  
28

1 November 21, 2019, before the Honorable Gary Feess of Phillips ADR, with representatives of  
2 several Intervenors in attendance. (*Id.* at ¶ 3.) In written submissions to the mediator, the parties  
3 provided candid assessments of their cases and their settlement positions. (*Id.*) At the mediation,  
4 Judge Feess discussed with each side the complexity of the legal and factual issues, and assisted the  
5 parties in narrowing their differences. (*Id.*)

6 Ultimately, the parties agreed that Verizon would pay \$76 million to settle all claims in this  
7 action and the Nevada Action, and executed a binding settlement term sheet. (*Id.*) Verizon and  
8 Plaintiffs' counsel also separately negotiated and executed a term sheet to settle Plaintiffs' counsel's  
9 claim for statutory attorney fees and costs pursuant to Cal. Gov't Code §12652(g)(8). (*Id.*)

10 In the months since the mediation, the parties have drafted and negotiated a long-form  
11 Settlement Agreement with respect to this California Action and the Nevada Action. (Shepard Decl.  
12 ¶ 3 & Ex. A thereto.) Relator and Verizon have approved and executed the Settlement Agreement.  
13 The Settlement Agreement is conditioned on certain events, including this Court's entry of an order  
14 in a form incorporated as part of the Settlement Agreement. While the Settlement Agreement  
15 submitted with this motion addresses both the Nevada and the California Action, Plaintiffs ask this  
16 Court to issue rulings with respect to settlement of the California Action only. Plaintiffs are not  
17 asking this Court to issue any rulings with respect to settlement of the Nevada Action, or to approve  
18 any allocation to Nevada entities.

19 **D. Proposed Preliminary Allocation of Verizon Settlement Proceeds**

20 Plaintiffs' expert Phillip Kline prepared the allocation of settlement funds using data  
21 produced by Verizon.<sup>10</sup> Mr. Kline applied the same principles that were used in preparing the  
22 previously-approved Sprint and T-Mobile settlement allocations, allocating settlement funds based  
23 solely on each entity's spending on Verizon wireless services during the relevant period.<sup>11</sup> (*See*  
24

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25 <sup>10</sup> Verizon takes no position on the allocation of the settlement payment between this action and the  
26 Nevada Action, or the allocation of the settlement payment between Intervenors and Non-  
Intervenors in this action. (Shepard Decl. Ex. A ¶ 27).

27 <sup>11</sup> Mr. Kline was able to further refine the approach here by excluding spending on equipment and  
28 focusing only on wireless services spending (which is pertinent to Plaintiffs' "lowest cost available"

1 generally Kline Decl.) In this case, as was the case in the Sprint and T-Mobile settlements, the  
2 spending on Verizon wireless services is the best available proxy for damages. (Shepard Decl.  
3 ¶ 13(f).)

4 The Verizon Overall Proposed Allocation is Appendix B to the Kline Declaration, and is  
5 incorporated into the Verizon Settlement Agreement (it is Exhibit A to the Verizon Settlement  
6 Agreement). Appendix C to the Kline Declaration shows the allocations to California entities only,  
7 and organizes the California entities into three groups: Intervenors; Non-Intervenor Customers; and  
8 Non-Intervenor Non-Customers.<sup>12</sup>

9 The result is that out of the total \$76 million settlement, \$68,231,673 is allocated among  
10 California Plaintiffs, while the remaining \$7,768,327 is allocated to the Nevada Action. (Kline Decl.  
11 App'x B at 6.) [REDACTED]

12 [REDACTED] Verizon's  
13 data shows that California Plaintiffs account for [REDACTED] of Verizon's total relevant wireless services  
14 revenue; relevant revenue from Nevada Plaintiffs accounts for the remaining [REDACTED] (Shepard Decl.  
15 ¶ 13(c).)

16 Intervenors and Consenting Non-Intervenors, who will become parties to the Settlement  
17 Agreement as described more fully below, will each receive 100% of their respective settlement  
18 allocations set forth in the Verizon Overall Proposed Allocation. (*Id.* ¶ 15.) Non-Consenting Non-  
19 Intervenors who do not "opt in" to the Settlement Agreement will only receive 90% of their  
20 settlement allocations. (*Id.* ¶ 14.) The remaining 10% of the settlement allocations for Non-  
21 Consenting Non-Intervenors will be redistributed amongst the California Intervenors and California  
22 Consenting Non-Intervenors in proportion to their spending on wireless services with Verizon. (*Id.*)

23 \_\_\_\_\_  
24 and "optimization" claims.) This approach was not possible with Sprint due to data limitations, and  
25 thus spending on equipment was also considered for Sprint.

26 <sup>12</sup> In light of a confidentiality designation by Verizon, the version of Appendix C that is being  
27 publicly filed in support of this motion has been redacted to exclude one column, which shows for  
28 each entity the following percentage: (gross allocation to the entity) / (total relevant wireless  
spending by all California entities). Pursuant to Cal. R. Court 2.551(b)(3), Plaintiffs have lodged  
an unredacted copy of this document with the Court.

1 None of this remaining 10% will be distributed to any Nevada entities. This re-allocation, among  
2 the California entities, will be shown in the Verizon California Final Proposed Allocation, which  
3 Relator will submit to the Court prior to the Approval Hearing. The Verizon California Final  
4 Proposed Allocation will be an updated version of Appendix C to the Kline Declaration, and it will  
5 show the final proposed allocation amount for each California entity after making the calculations  
6 described above.

7 **E. Proposed Process for Obtaining Consent to the Verizon California Settlement**

8 On June 1, 2020, the Court approved the Joint Motion and set the Approval Hearing for  
9 September 24, 2020. (ROA 1067.) The same Order also approved the notices to be sent, by Relator,  
10 to all Non-Intervenors informing the Non-Intervenors of the settlement. (*Id.*)

11 Each Intervenor has approved (or is in the process of approving) the terms of the Settlement  
12 Agreement and its Exhibit A (the Verizon Overall Proposed Allocation). (Bonn Decl. ¶ 3(d).)  
13 Plaintiffs will collect signature pages from each Intervenor, and submit them to the Court prior to  
14 the Approval Hearing. (*Id.*)

15 In addition, by the time of the Approval Hearing, Relator's counsel will have fulfilled the  
16 Court-approved notice procedure for notifying Non-Intervenor Customers and providing them with  
17 (1) an opportunity to object and (2) instructions for executing a Consent and Release by which such  
18 Non-Intervenors may join the Settlement Agreement as parties. (*Id.* at ¶ 3(e).) The notice packet  
19 sent to Non-Intervenor Customers will include unredacted versions of this Motion for Approval and  
20 all exhibits thereto.

21 Relator's counsel have consulted with the Office of the California Attorney General and  
22 attorneys for Defendants regarding the State of California's participation in this "opt-in" procedure.  
23 Based on those consultations, Relator's counsel understand that a significant number of state  
24 agencies may consent to this settlement, and thereby obtain their 100% allocation. That did not  
25 occur in the earlier T-Mobile and Sprint settlements (no part of the State of California consented to  
26 those settlements). The Office of the Attorney General, Plaintiffs, and Verizon agree that Susman  
27 Godfrey L.L.P. will also provide specific notice to the various state agencies, identified by the Office  
28

1 of the Attorney General, that account for the vast majority of the State’s allocated settlement dollars.  
2 Those agencies will then be afforded an opportunity to “opt in” to the settlement by providing  
3 consents to Relator’s counsel. State agencies that opt-in will be treated as Consenting Non-  
4 Intervenor under the settlement.

5 Relator also has identified 28 Non-Intervenor Non-Customers. (Shepard Decl. ¶ 13(k); Kline  
6 Decl. App’x C.) These are California subdivisions that were named as Plaintiffs in Relator’s  
7 Complaint, but which, according to Verizon’s data, did not buy material amounts of wireless  
8 services from Verizon during the period of 2011 to 2019. (*Id.*) These Non-Intervenor Non-  
9 Customers are listed as a separate category in Appendix C to the Kline Declaration, which shows  
10 them as having \$0 of revenue, and receiving \$0 in settlement proceeds. (*Id.*) Verizon and Plaintiffs  
11 have agreed that these Non-Intervenor Non-Customers are not parties to the settlement and are not  
12 bound by the broad releases therein. (Shepard Decl. Ex. A ¶ 44.) Non-Intervenor Non-Customers  
13 will accordingly receive notice of the settlement informing them of the date for the settlement  
14 approval hearing and the deadline for objections, contact information for counsel, and directions to  
15 a website from which they can download the publicly filed versions of this Motion for Approval  
16 and all exhibits thereto. (*Id.*)

17 **F. Scope of Release by Consenting and Non-Consenting Non-Intervenors.**

18 The Settlement Agreement protects the rights of Consenting and Non-Consenting Non-  
19 Intervenor with respect to the scope of their release in several ways.

20 Non-Intervenors may consent to the join the Settlement Agreement by executing a “Consent  
21 and Release by Non-Intervenor” should they wish to receive their full settlement allocation (rather  
22 than 90% of it). (Shepard Decl. ¶ 4, *id.* Ex. A ¶ 42.) Those who do so become parties to the  
23 Settlement Agreement as “Consenting Non-Intervenors.” Intervenor and Consenting Non-  
24 Intervenor Customers agree to release Verizon from “any and all manner of claims . . . arising out  
25 of or in any way connected with the Covered Conduct . . . .” (Shepard Decl. Ex. A ¶¶ 29, 42.)  
26 Covered Conduct includes “all allegations in the California Action (in the California TAC or any  
27 prior Complaint) relating to Verizon.” (*Id.* ¶ 25.) This release not only releases CFCA claims, but  
28

1 also common-law claims including claims for breach of contract. However, this release is limited  
2 to claims “arising out of or in any way connected with the Covered Conduct”—the same limitation  
3 used in the settlement agreement with Sprint. (*Id.* ¶ 31(a).)

4 By contrast, the Settlement Agreement limits the scope of release for Non-Consenting Non-  
5 Intervenor to the asserted CFCA claims only. The Settlement Agreement provides that the release  
6 of claims of Non-Consenting Non-Intervenor Customers who are not parties to this Agreement is  
7 limited to “the specific claims Relator asserted on behalf of the Non-Consenting Non-Intervenors  
8 under California Government Code section 12651(a) in the California Action pertaining to the  
9 Covered Conduct.” (*Id.* ¶¶ 31(b), 44.) Thus, *only* the specific CFCA claims alleged in Relator’s  
10 complaints will be released on behalf of Non-Consenting Non-Intervenor Customers, as authorized  
11 by the CFCA. Cal. Gov’t Code § 12652(c)(1). For instance, Intervenor’s TAC added a cause of  
12 action for “Breach of Written Contract: Failure to Retain Records” based on Verizon’s failure to  
13 comply with the recordkeeping requirements of the WSCA Contracts. (TAC ¶¶ 218-24.) Because  
14 these recordkeeping requirements were never the basis for Plaintiffs’ CFCA claims, Non-  
15 Consenting Non-Intervenors would not release any claims based on them.

16 The Settlement Agreement also protects Intervenor, Consenting Non-Intervenors, and Non-  
17 Consenting Non-Intervenors alike by (1) expressly disclaiming any release based on “[c]laims not  
18 arising out of or in any way connected with the Covered Conduct” and (2) enumerating specific  
19 categories of potential reserved claims, in language that closely tracks similar language from the T-  
20 Mobile and Sprint settlement agreements. (Shepard Decl. Ex. A ¶ 31(a).)

21 Finally, the “exclusive jurisdiction and venue for any dispute relating to this Settlement  
22 Agreement as it relates to the California Action is the Superior Court for the County of Sacramento,”  
23 meaning this Court has jurisdiction over any such dispute. (*Id.* ¶ 64.)

### 24 **III. LEGAL STANDARDS**

25 A relator may release CFCA claims only as “part of a court approved settlement.” Cal.  
26 Gov’t Code § 12652(c)(1). The Court must determine whether dismissal – and, accordingly, the  
27 settlement – is in “the best interests of the parties involved” and furthers “the public purposes behind  
28

1 [the CFCA].” *Id.* Protection of the public fisc is the primary policy behind the CFCA. *See State of*  
2 *California ex rel. Bowen v. Bank of Am. Corp.*, 126 Cal. App. 4th 225, 236 (2005) (“The ultimate  
3 purpose of the [CFCA] is to protect the public fisc.”); *Am. Contract Servs. v. Allied Mold & Die,*  
4 *Inc.*, 94 Cal. App. 4th 854, 858 (2001) (same). The Ninth Circuit has interpreted similar provisions  
5 of the federal False Claims Act, upon which the CFCA was patterned, to permit the Court to review  
6 and approve a settlement agreement between a relator and a defendant, even over the government’s  
7 objection, so long as it is fair and reasonable. *Killingsworth*, 25 F.3d at 725.

8 California courts approving settlements in the analogous class action context limit their  
9 inquiry “to the extent necessary to reach a reasoned judgment that the agreement is not the product  
10 of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement,  
11 taken as a whole, is fair, reasonable and adequate to all concerned.” *In re Microsoft I-V Cases*, 135  
12 Cal. App. 4th 706, 723 (2006) (quotation marks and citation omitted). California courts presume  
13 that a settlement is fair where it “is the result of arms’-length negotiation, investigation and  
14 discovery . . . are sufficient to permit counsel and the court to act intelligently, counsel are  
15 experienced in similar litigation, and the percentage of objectors is small.” *Id.* (quotation marks and  
16 citation omitted). In exercising their broad discretion to approve settlements, California courts  
17 “should consider relevant factors, which may include, but are not limited to the strength of plaintiffs’  
18 case, the risk, expense, complexity and duration of further litigation . . . the amount offered in  
19 settlement, the extent of discovery completed and the stage of the proceedings, the experience and  
20 views of counsel, the presence of a governmental participant, and the reaction of [absent class  
21 members] to the proposed settlement.” *Id.* (quotation marks and citation omitted).

22 **IV. THE SETTLEMENT IS FAIR, REASONABLE, AND IN THE BEST INTERESTS**  
23 **OF INTERVENORS AND NON-INTERVENORS.**

24 **A. The Settlement Is Entitled to a Presumption of Fairness.**

25 A trial court applies a “presumption of fairness” to a settlement that is the product of “arm’s-  
26 length negotiation,” where “investigation and discovery . . . are sufficient to permit counsel and the  
27 court to act intelligently, counsel are experienced in similar litigation,” and there is only a small  
28 percentage of objectors. *Id.*

1 This settlement is entitled to a presumption of fairness. *Id.* The combined settlement of \$76  
2 million, to settle the California and Nevada Actions, was the product of an arms-length negotiation  
3 and a mediator’s proposal. That negotiation occurred seven years after this action was filed and after  
4 (1) an extensive investigation while the matter remained under seal; (2) briefing, argument, and  
5 decisions by this Court on Verizon’s multiple demurrers; and (3) nearly three years of active and  
6 voluminous discovery. The parties mediated before the Hon. Gary Feess, an experienced mediator,  
7 retired federal judge, and former False Claims Act litigator—who had experience successfully  
8 mediating Relator’s claims against Sprint. (Bonn Decl. ¶ 3(a).) This settlement therefore resulted  
9 from an arms’-length negotiation, based on an investigation and discovery sufficient to permit  
10 counsel and the Court to intelligently assess its fairness.

11 **B. The Settlement Is Fair and Reasonable Under the Relevant Factors.**

12 There is no reason to question the presumption of fairness here, as all relevant factors  
13 confirm that this is not only a fair but an exceptional settlement. The Sprint “benchmark,” the risk  
14 associated with further litigation, the extent of discovery, and the expense, complexity, and duration  
15 of further litigation all confirm that this settlement represents an outstanding result for Non-  
16 Intervenors.

17 **1. The Settlement Is Fair in Comparison to the Prior Sprint Settlement**

18 The settlement represents █████ of the total revenues that California government entities paid  
19 Verizon for wireless services during the relevant period. (Shepard Decl. ¶ 13(b).) The Sprint  
20 settlement, by contrast, represented █████ of Sprint’s revenue from California government customers.  
21 This settlement thus exceeds the Sprint “benchmark” by █████. (*Id.* ¶ 13(d).) To put a dollar value  
22 on those percentages: If Relator had agreed to settle with Verizon for the Sprint benchmark, then  
23 Non-Intervenors’ gross recovery would be approximately █████ lower. (*Id.*)

24 **2. The Settlement Is Fair Given the Risks Associated with Further  
25 Litigation.**

26 From the beginning of this case, Defendants including Verizon expressed total confidence  
27 that they would prevail at summary judgment or trial and that damages were either unprovable or  
28 else very low. More specifically, Verizon asserted the defenses described in Part II.B.3 above.



1 Plaintiffs strongly disagree with Verizon’s materiality, scienter, causation, and damages arguments.  
2 But continuing to litigate would present the risk of defeat at summary judgment, trial, or on appeal—  
3 resulting in zero recovery. The settlement is fair in light of avoiding such risk.

4 **3. The Settlement Is Fair Given the Extent of Discovery, the Stage of**  
5 **Proceedings, and the Expense, Complexity, and Duration of Further**  
6 **Litigation.**

7 The settlement is also fair in light of (a) the extensive discovery Relator, Intervenors, and  
8 their counsel have already conducted and (b) the expense, complexity, and duration of continued  
9 discovery, trial, and any appeals. The defensive and offensive discovery obligations on Relator,  
10 Intervenors, and Relator’s counsel described in Part II.B.1 above and the accompanying Bonn,  
11 Shepard, and Yampolsky declarations were nothing short of crushing. Indeed, 15 Intervenors  
12 *dropped out* precisely because of the enormous burden of their defensive discovery obligations,  
13 which taxed limited government resources. (Bonn Decl. ¶ 24.) These tasks also have been incredibly  
14 time consuming and costly for Plaintiffs’ counsel. The burdens on Intervenors’ and counsel’s time  
15 and resources would only have continued to grow if litigation had continued.

16 Indeed, at the time of settlement, Verizon was threatening to depose an additional 78  
17 Intervenor witnesses in a six-week period. (*Id.* ¶ 10.) Plaintiffs’ counsel anticipated incurring  
18 significant additional time and costs to finalize and serve their expert reports, review the reports of  
19 and depose Verizon’s experts, prepare rebuttal reports, brief summary judgment and *Daubert*  
20 motions, and prepare for trial. (*Id.*) And while a trial had been set for May 2020, that was only a  
21 Phase I trial for 30 Intervenors and eight Non-Intervenors. After resolution of that trial, Relator and  
22 Relator’s counsel faced the prospect of further protracted litigation, discovery, summary judgment,  
23 and potentially another trial for the hundreds of remaining Phase II Non-Intervenors. And of course,  
24 that is to say nothing about resolution of any appeals that Verizon may have pursued if Plaintiffs  
25 prevailed at trial. (*Id.*)

26 Continued litigation would require the investment of significant additional expenses, taxing  
27 the resources of Relator, Relator’s counsel, Intervenors, and eventually Non-Intervenors. While  
28 Relator’s counsel have put together a compelling case, even if they were to prevail, it could be years

1 until Non-Intervenors would see any recovery at all. (*Id.* ¶ 11.) Thus, a settlement representing [REDACTED]  
2 of Verizon’s relevant revenue is fair and reasonable in light of the stage of the proceedings discovery  
3 conducted to date, as well as the expense, complexity, and potentially prolonged duration of further  
4 litigation before Non-Intervenors could secure a recovery.

5 **C. The Scope of Release and Settlement Allocation Plan Are Fair and Reasonable.**

6 Not only is the overall amount of the settlement fair, but the allocation of settlement funds  
7 among Intervenors, Non-Intervenor Verizon Customers, and Non-Intervenor Non-Customers—as  
8 well as the scope of the release for Non-Intervenors—is also fair and reasonable.

9 The Verizon Overall Proposed Allocation is fair and reasonable to all California  
10 Government Plaintiffs. As described in detail in Part II.D above, each government entity’s share of  
11 purchases made from Verizon under the contracts, as reflected in the revenue data provided by  
12 Verizon, is the basis of its settlement allocation.<sup>13</sup> Consenting Non-Intervenors who choose to be  
13 bound by the Settlement Agreement will receive 100% of their allocation, while Non-Consenting  
14 Non-Intervenors will receive 90% (with the remaining 10% being distributed among Intervenors  
15 and Consenting Non-Intervenors). This proposed allocation plan distributes the settlement proceeds  
16 fairly and transparently. (Shepard Decl. ¶ 13.)

17 The Settlement Agreement also protects Non-Intervenors with respect to the scope of their  
18 release. If a relator brings “a civil action for a violation” of the CFCA for itself and “either for the  
19 State of California . . . or for a political subdivision” and litigates the case without intervention, “the  
20 qui tam plaintiff shall have the same right to conduct the action as the Attorney General or  
21 prosecuting authority would have had if it had chosen to proceed.” Cal. Gov’t Code § 12652(f)(1).  
22 This right includes the right to dismiss the action and “waive[] or release[]” a claim for a CFCA  
23 violation as “part of a court approved settlement of a false claim civil action brought under [the  
24 CFCA].” *Id.* § 12652(c)(1). However, the CFCA does not authorize the release of non-CFCA claims

25 \_\_\_\_\_  
26 <sup>13</sup> Verizon takes no position on the allocation of the settlement payment between Intervenors and  
27 Non-Intervenors in this action, except to the extent that the Parties have agreed to the 10% reduction  
28 for Non-Intervenors in the absence of a signed Consent and Release. (Shepard Decl. Ex. A ¶¶ 27,  
43.)

1 on behalf of Non-Consenting Non-Intervenors. Nor would it permit the release of potential CFCA  
2 claims relating to conduct not at issue in the present action.

3 Relator has addressed this concern in several ways. Here again, Relator and Verizon have  
4 modeled this release procedure on the precedents set by this Court in the Sprint and T-Mobile  
5 settlements. *First*, Non-Intervenors only waive non-CFCA claims to the extent that they “opt in,”  
6 execute a Consent and Release, and thereby voluntarily become parties to the Settlement  
7 Agreement. *Second*, Non-Consenting Non-Intervenors only release “the specific claims Relator  
8 asserted . . . under California Government Code section 12651(a) in the California Action pertaining  
9 to the Covered Conduct.”<sup>14</sup> (Shepard Decl. Ex. A ¶ 31(b)(i).) *Third*, this Court has jurisdiction  
10 disputes arising from the Settlement Agreement. *See supra* Part II.F.

11 Thus, both the settlement allocation plan and the scope of the release with respect to Non-  
12 Intervenors are fair, reasonable, and consistent with the CFCA.

13 **V. RELATOR’S REQUEST FOR A 43% SHARE OF NON-INTERVENOR**  
14 **SETTLEMENT PROCEEDS IS JUSTIFIED.**

15 Relator’s request for a 43% share of settlement proceeds recovered for Non-Intervenors is  
16 also fair and justified by the extraordinary efforts Relator, Intervenors, and counsel have devoted  
17 toward this litigation. The Office of the Attorney General does not intend to object to this amount.  
18 (Yampolsky Decl. ¶ 29.) In the related Nevada Action, the Office of the Attorney General of Nevada  
19 has agreed to a 43% Relator’s share. (Shepard Decl. ¶ 13(c).)

20 The CFCA entitles Relator to a share of the recovery by the Intervenors and Non-  
21 Intervenors. Cal. Gov’t Code § 12652(g)(2). The Verizon Overall Proposed Allocation reflects a  
22 43% Relator’s share of the California Non-Intervenors’ gross allocation, for a total of \$26,103,389,  
23 with \$21,608,625 from the Non-Intervenors’ settlement allocation.<sup>15</sup> (Kline Decl. App’x B at 6;

24  
25 <sup>14</sup> This provision means that non-CFCA claims arising from Covered Conduct are not released. Nor  
26 would Non-Consenting, Non-Intervenors release CFCA claims that were not asserted in this suit.

27 <sup>15</sup> Verizon was not consulted and takes no position regarding Relator’s share and, as set forth in the  
28 Settlement Agreement, denies Plaintiffs’ allegations. (Shepard Decl. Ex. A ¶ 51.)

1 Yampolsky Decl. ¶ 2.) As required by the CFCA, each California government entity pays the  
2 Relator's share from its settlement allocation.

3 California Government Code section 12652(g)(3) entitles a relator to receive from Non-  
4 Intervenors an amount that the Court determines is "reasonable for collecting the civil penalty and  
5 damages on behalf of the government," which amount "shall be not less than 25 percent and not  
6 more than 50 percent of the proceeds of the action or settlement." Cal. Gov't Code § 12652(g)(3).  
7 In light of the legislative history of the federal FCA and the Department of Justice's Relator Share  
8 Guidelines,<sup>16</sup> federal courts look to numerous factors in determining a relator's percentage share of  
9 the proceeds, including:

- 10 • The significance of the information provided to the government;
- 11 • Whether the government would ever have known about the FCA violation but for  
12 the information or documents the relator provided;
- 13 • Whether the relator's complaint exposed a widespread scheme;
- 14 • Whether the relator cooperated with the government and its investigation;
- 15 • The contribution of the relator's counsel; and
- 16 • Whether the relator and relator's counsel performed work that was helpful to  
17 settlement negotiations or helped to negotiate a settlement.<sup>17</sup>

18 Based on these factors, Relator's extensive participation in this case—with respect to  
19 prosecuting the claims against all the Defendants, in general, and to Verizon, in particular—merits  
20 a 43% share of the Non-Intervenors' settlement allocation for several reasons.

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21  
22 <sup>16</sup> S. Rep. No. 99-345, at 28 (1986), reprinted in 1986 U.S.C.C.A.N. 5266, 5293; U.S. Dep't Of  
23 Justice, Guidelines Regarding Relator's Share (Dec. 10, 1996), reprinted in 11 False Claims Act  
24 and *Qui Tam* Quarterly Review, at 17-19 (Oct. 1997).

25 <sup>17</sup> See, e.g., *United States ex rel. Shea v. Verizon Communications*, 844 F. Supp. 2d 78, 81-82, 83-  
26 84 (D.D.C. Feb. 23, 2012); *United States ex rel. Rille v. Hewlett-Packard Co.*, 784 F. Supp. 2d 1097,  
27 1100-01 (E.D. Ark. 2011); *United States ex rel. Johnson-Pochardt v. Rapid City Reg'l Hosp.*, 252  
28 F. Supp. 2d 892, 897-98, 899-900 n.1-2 (D.S.D. 2003); *United States ex rel. Alderson v. Quorum  
Health Grp.*, 171 F. Supp. 2d 1323, 1332-35, 1338 (M.D. Fla. 2001); *United States ex rel. Pratt v.  
Alliant Techsystems*, 50 F. Supp. 2d 942, 948 (C.D. Cal. 1999).

1           **A. A 43% Share Is Appropriate Because of the Extraordinary Results Relator**  
2           **Obtained for Non-Intervenors.**

3           *First*, Relator should be rewarded with a 43% share in light of the extraordinary results  
4 achieved on behalf of Non-Intervenors against Verizon. As discussed in Part IV.B.1 above, this  
5 settlement exceeds the Sprint benchmark by [REDACTED]. (Shepard Decl. ¶ 13(d).) In dollar terms, that  
6 means Non-Intervenors obtained about [REDACTED] more from Verizon than they would have  
7 obtained if Relator had settled at the Sprint benchmark. (*Id.*) Relator achieved this exceptional result  
8 notwithstanding the serious challenges presented by the case against Verizon, as described in Part  
9 II.B above—including various defenses on the merits, heavy discovery obligations, significant  
10 expenses, and complex logistical and expert work. Increasing Relator’s share to 43%, as opposed to  
11 the 42% Relator’s share in the Sprint settlement, will amount to an additional \$502,526 for Relator.<sup>18</sup>  
12 (Yampolsky Decl. ¶ 25.) That amount, in turn, represents only [REDACTED] of the [REDACTED] increase in  
13 dollar recovery that Relator achieved for Non-Intervenors in the Verizon settlement, as compared  
14 with the Sprint settlement.

15           **B. A 43% Share Is Appropriate Because of Relator’s Extraordinary Efforts and**  
16           **Sacrifices.**

17           *Second*, Relator’s efforts against Verizon were extraordinary. The efforts by Relator’s  
18 counsel during this litigation are described in Part II.B above, Part VI below, and in the  
19 accompanying Bonn, Shepard, and Yampolsky Declarations. These efforts were much greater than  
20 Relator’s efforts against Sprint (there were only seven Sprint-related depositions, and only  
21 preliminary Sprint-related expert work). The vastly increased efforts by Relator against Verizon  
22 also merit an increase to a 43% Relator’s share.

23           But Relator’s efforts and sacrifices to bring this case to fruition began much earlier. Relator  
24 discovered and reported to the government a long-running, widespread fraud about which the  
25 government was unaware. Relator brought to bear years of experience in the field of  
26 telecommunications expense management to understand that Defendants did not produce *genuine*

27 <sup>18</sup> The total gross settlement allocation, to all California Non-Intervenors, is \$50,252,615. (Shepard  
28 Decl. ¶ 13(d).) One percent of that amount is \$502,526.

1 rate-plan optimization reports in accordance with their contractual obligations. (Yampolsky Decl.  
2 ¶ 9.) Having worked as a vendor for several of the Defendants, as well as sat across the table from  
3 them when Defendants’ commercial customers hired Relator to reduce their wireless costs, Relator  
4 knew Defendants produced a multiplicity of reports to their customers that might look like – and in  
5 some cases even be called – rate-plan optimization reports. (See, e.g., TAC ¶¶ 111-119.) Relator  
6 also knew that real optimization reports required specific elements – a line-by-line analysis of  
7 historic usage, consideration of all rate plans available to the user, and, critically, a selection from  
8 those available rate plans of the one that would yield the lowest cost – and that Defendants did not  
9 provide such analyses to their government customers on a regular basis. (Yampolsky Decl. ¶  
10 9.) These facts support a 43% Relator’s share. See, e.g., *United States ex rel. Alderson v.*  
11 *Quorum Health Grp.*, 171 F. Supp. 2d 1323, 1332 (M.D. Fla. 2001) (approving relator’s share 1%  
12 below the federal maximum where “the weight and importance of [the relator’s] initial  
13 allegations and his knowledge of hospital cost accounting formed the enduring foundation  
14 upon which the multi-million dollar recovery stands”).

15 Relator and its counsel met with and evaluated the claims of many California government  
16 entities, reviewing their records and interviewing their employees to assess the strength and scope  
17 of their claims. The information the Relator provided, the Relator’s expertise in understanding and  
18 explaining the contracts and their requirements, and the Relator’s analysis of government  
19 purchaser’s records led to more than three dozen California political subdivisions – including some  
20 of the largest political subdivisions – intervening in the action. This is particularly notable because  
21 the political subdivisions did so despite the declination of the State of California. (Yampolsky Decl.  
22 ¶¶ 8-15.)

23 Relator’s complaint exposed a widespread, long-running scheme that caused the State of  
24 California and hundreds of its political subdivisions to pay significantly more for wireless services  
25 than they should have paid. Relator revealed a fraud about which the government did not know.  
26 Until Relator stepped forward, the government did not know about the fraud because (1) the  
27 contracts were complex; (2) the government did not have access to the information needed to  
28

1 understand that the government's wireless lines were not optimized (such as detailed usage data and  
2 the elements and price terms of all rate plans available under the contracts to the government); and  
3 (3) Verizon did provide, from time to time, misleading analyses that Verizon tried to pass off as  
4 rate-plan optimization, but were a far cry from the genuine article. (*Id.* ¶ 14.) Moreover, Relator's  
5 investigation made clear that the same conduct affected numerous government entities. (*Id.*)

6 Relator also made additional sacrifices to pursue this case. Relator had previously provided  
7 outside optimization services to Verizon for many of Verizon's commercial customers. After the  
8 State of California declined to intervene, Verizon terminated all dealings with Relator, thereby  
9 ending Relator's business and blackballing its founder and owner, Jeffrey Smith, from further work  
10 in the industry. Verizon also threatened to sue Relator for breach of contract, and to seek sanctions  
11 against Relator, if Relator moved forward with the CFCA claims. Relator persevered on behalf of  
12 Non-Intervenors despite the real costs, and the real risks, it endured. (*Id.* ¶ 17.)

13 These facts support an enhanced Relator's share from Non-Intervenors' settlement proceeds  
14 with respect to the Verizon settlement.

15 **C. The Relator's Share Treats Intervenors and Non-Intervenors Fairly.**

16 *Third*, a 43% Relator's share of the Non-Intervenors' recovery appropriately recognizes the  
17 significant resources that Intervenors devoted to the pursuit of this matter.

18 The CFCA, unlike the federal False Claims Act, offers a larger share to a relator when a  
19 government entity does not intervene. *Compare Cal. Gov't Code* § 12652 (g)(3) (awarding a relator  
20 up to 50 percent of a government entity's recovery) *with* 31 U.S.C. § 3730 (d)(2) (capping the  
21 relator's award at 30 percent). The Legislature departed from federal precedent because it  
22 understood some CFCA cases are so complex and risky that they require a large reward to encourage  
23 whistleblowers and their lawyers to prosecute them. This case – which involves hundreds of local-  
24 government victims and thus immense litigation burdens – is one of them.

25 Intervenors agreed, when signing up Relator's counsel to represent them, that Relator would  
26 receive a 25% share of Intervenors' gross proceeds, and that Relator's counsel would receive an 8%  
27 contingency fee (in addition to their statutory attorneys' fees). (Yampolsky Decl. ¶ 27.) In total,  
28

1 therefore, Intervenor's agreed to give up 33% of their gross proceeds. (*Id.*) Intervenor's struck this  
2 deal with Relator early on in the case—before anyone realized just how massive the discovery  
3 obligations would be. If Relator is awarded a 43% share of Non-Intervenor's gross proceeds, that  
4 will mean that Intervenor's will receive *net* proceeds that are 10% higher (67% of the gross) than the  
5 *net* proceeds that Non-Intervenor's will receive (57% of the gross). (*Id.*)

6 This 10% differential between Intervenor's and Non-Intervenor's net recovery is an  
7 appropriate reward for the Intervenor's, in compensation for the tremendous sacrifices that Non-  
8 Intervenor's made to participate in this case. As described in Part II.B.1 above, Intervenor's spent  
9 thousands of hours to collect and produce millions of pages of documents from hundreds of  
10 decentralized e-mail custodians, to respond to a never-ending barrage of interrogatories and written  
11 questions from Defendants, and to prepare for and attend depositions. By contrast, this case required  
12 much less from Non-Intervenor's. (*Id.* ¶ 28.) The case settled before any Non-Intervenor, including  
13 the State of California, had to produce a single witness for a deposition. (*Id.*) Few Non-Intervenor's  
14 produced any documents, and the few that did collectively produced less than 10% of the number  
15 of documents the Intervenor's produced. (*Id.*)

16 For all of these reasons, Relator respectfully submits that a 43% Relator's share of the Non-  
17 Intervenor's settlement proceeds is warranted.

18 **VI. IF ANY NON-INTERVENOR OBJECTS, THE COURT SHOULD FIND THAT**  
19 **\$23,450,000 FOR STATUTORY ATTORNEYS' FEES AND COSTS IS FAIR AND**  
**REASONABLE.**

20 Finally, Relator's counsel settled with Verizon for \$23,450,000 to resolve their claim for  
21 statutory attorneys' fees and costs pursuant to Cal. Gov't Code §12652(g)(8). (Bonn Decl. ¶ 3(c);  
22 Shepard Decl. Ex. A ¶ 52.) This amount was separately negotiated after the parties had negotiated  
23 a settlement in principle of Plaintiffs' CFCA and related claims against Verizon. (Bonn Decl.  
24 ¶ 3(c).) Neither Intervenor's nor Verizon objects to this settlement. Plaintiffs do not anticipate that  
25 any Non-Intervenor will object. However, should any such objection arise, the Court should approve  
26 this allocation for counsel's attorneys' fees and costs as fair and reasonable.



1           Where the government or a relator prevails in or settles a CFCA action, the relator “shall  
2 receive an amount for reasonable expenses that the court finds to have been necessarily incurred,  
3 plus reasonable costs and attorney’s fees.” Cal. Gov. Code § 12652(g)(8). By virtue of the  
4 settlement, Plaintiffs prevailed in the CFCA action as to Verizon, entitling the Relator to such  
5 “reasonable expenses . . . plus reasonable costs and attorney’s fees.”

6           Where a government entity has declined to intervene but subsequently objects to the  
7 settlement of Relator’s claim for statutory attorneys’ fees and costs, the Court must “hold a hearing  
8 to determine whether the proposed settlement fairly and reasonably allocates the settlement funds,”  
9 including whether the “amount to be paid to [Relator] and his counsel” is “a fair appraisal of the  
10 value of his case and [the] services rendered by his counsel . . . .” *Killingsworth*, 25 F.3d at 725.  
11 Should any Non-Intervenor object, Plaintiffs respectfully submit that \$23,450,000 for attorneys’  
12 fees and costs is “fair appraisal” of the value of counsel’s services and should be approved.

13           **A. Plaintiffs’ Counsel Have Incurred \$41,727,612.55 in As-Yet Unreimbursed**  
14           **Statutory Attorneys’ Fees and Costs.**

15           The accompanying declarations of Relator’s counsel Amanda Bonn, Steven Shepard, and  
16 Ari Yampolsky describe the relevant work performed, the hours worked, the basis for the hourly  
17 fees of each professional, and the expenses incurred.<sup>19</sup> Lead counsel have invested 63,114 hours  
18 that equate to attorney fees of \$36,176,970 at present rates. (Bonn Decl. ¶ 56.) Plaintiffs’ counsel  
19 have also advanced costs of \$7,750,642.55. (*Id.*) Plaintiffs’ counsel have thus invested more than  
20 \$43,927,612.55 in fees and costs to pursue this action. (*Id.*)

21           So far, Relator’s counsel have recovered \$2,200,000 in statutory fees in connection with the  
22 Sprint and T-Mobile settlements. (Bonn Decl. ¶ 57.) After accounting for those fees, Relator’s  
23 counsel have advanced more than \$41,727,612.55 in statutory attorneys’ fees and costs that have  
24 yet to be recovered. (*Id.*) And yet Relator’s counsel seek a total of \$36,450,000 in connection with

25 \_\_\_\_\_  
26 <sup>19</sup> Counsel’s actual statutory fees and costs are higher than the figures discussed in this section. This  
27 is because the data for Constantine Cannon and Susman Godfrey are current through May 30, 2020.  
28 (Bonn Decl. ¶ 43; Yampolsky Decl. ¶ 51.) In addition, these figures do not include time incurred  
by local counsel or Relator’s prior counsel.

the AT&T and Verizon settlements of their claim for statutory attorneys’ fees and costs— \$23,450,000 from Verizon and \$13,000,000 from AT&T. (*Id.*) That means Lead Counsel have incurred an additional \$5,277,612.55 in statutory attorneys’ fees and costs that they do not even seek to recover. (*Id.* & Tbl. 3.) These numbers are reflected in the table below:<sup>20</sup>

<b>Lead Counsel Statutory Fees and Costs</b>	
Lead Counsel Lodestar Statutory Fees	\$36,176,970.00
Costs	\$7,750,642.55
<b>Total Statutory Fees and Costs</b>	<b>\$43,927,612.55</b>
Less T-Mobile Settlement of Relator’s Statutory Attorneys’ Fees	(\$200,000.00)
Less Sprint Settlement of Relator’s Statutory Attorneys’ Fees	(\$2,000,000.00)
<b>Unreimbursed Statutory Fees &amp; Costs Before Final Settlements</b>	<b>\$41,727,612.55</b>
Less Verizon Settlement of Statutory Fees and Costs	(\$23,450,000)
Less AT&T Settlement of Statutory Fees and Costs	(\$13,000,000)
<b>Unreimbursed Statutory Fees &amp; Costs After Final Settlements</b>	<b>\$5,277,612.55</b>

**B. \$23,450,000 in Attorneys’ Fees and Costs from Verizon Is Reasonable.**

Relator’s counsel’s request for approval of \$23,450,000 in attorneys’ fees and costs from Verizon is reasonable.

A court assessing attorneys’ fees “begins with a touchstone or lodestar figure, based on the careful compilation of the time spent and reasonable hourly compensation of each attorney involved in the presentation of the case.” *Ketchum v. Moses*, 24 Cal. 4th 1122, 1131–32 (2001) (quotation marks and ellipses omitted). As to the hours worked, “an award of attorney fees may be based on counsel’s declarations, without production of detailed time records.” *Raining Data Corp. v. Barrenechea*, 175 Cal. App. 4th 1363, 1375 (2009). As for the hourly fee, courts have recognized that trial judges are best situated to decide, in their discretion, “the value of the professional services rendered in their courts.” *Christian Research Inst. v. Alnor*, 165 Cal. App. 4th 1315, 1321 (2008). Where “local counsel is unavailable, a trial court is within its discretion to consider out-of-town

<sup>20</sup> Counsel are entitled to recover both statutory fees, as well as any contingency fee to which their clients (Intervenors and Relator) have agreed. *See, e.g., U.S. ex rel. De Pace v. Cooper Health Sys.*, 940 F. Supp. 2d 208, 217 (D.N.J. 2013) (holding “the fee shifting provisions of the Federal False Claims Act do not prohibit an attorney from receiving both statutory attorneys’ fees and a contingency fee”); *Reynolds v. Ford Motor Co.*, - - Cal. Rptr.3d - - -, 2020 WL 1921742, at \*2, 6 (Ct. App. Apr. 21, 2020) (rejecting argument that plaintiff’s “counsel was not entitled to recover both a contingency fee and statutory fee” for claims under the Song-Beverly Act). These numbers only address statutory fees.

1 counsel’s higher rates . . . either in calculating the initial lodestar figure or in evaluating whether to  
2 award a multiplier . . . .” *Envtl. Prot. Inf. Ctr. v. Dep’t of Forestry & Fire Prot.*, 190 Cal. App. 4th  
3 217, 248 (2010). The lodestar is adjusted to account for factors such as “(1) the novelty and difficulty  
4 of the questions involved, (2) the skill displayed in presenting them, (3) the extent to which the  
5 nature of the litigation precluded other employment by the attorneys, [and] (4) the contingent nature  
6 of the fee award.” *Ketchum*, 24 Cal. 4th at 1132 (citing *Serrano v. Priest*, 20 Cal. 3d 25, 49 (1977)  
7 (“*Serrano III*”). Such an enhancement is “intended to compensate for the risk of loss generally in  
8 contingency cases”:

9 [T]he unadorned lodestar reflects the general local hourly rate for a *fee-bearing* case;  
10 it does *not* include any compensation for contingent risk, extraordinary skill, or any  
11 other factors a trial court may consider under *Serrano III*. The adjustment to the lodestar  
12 figure, e.g., to provide a fee enhancement reflecting the risk that the attorney will not  
13 receive payment if the suit does not succeed, constitutes earned compensation; unlike  
14 a windfall, it is neither unexpected nor fortuitous. Rather, it is intended to approximate  
15 market-level compensation for such services, which typically includes a premium for  
16 the risk of nonpayment or delay in payment of attorney fees. In this case, for example,  
17 the lodestar was expressly based on the general local rate for legal services in a  
18 *noncontingent* matter, where a payment is certain regardless of outcome.

19 *Id.* at 1138 (emphasis in original).

20 Relator’s counsel have calculated the lodestar using current hourly rates. In *Missouri v.*  
21 *Jenkins*, 491 U.S. 274, 283–84 (1989), the Supreme Court recognized that because delayed and  
22 contingent legal fees should “[c]learly” not be valued at the same hourly rate as fees payable on an  
23 hourly basis, “an appropriate adjustment for delay in payment – whether by the application of  
24 current rather than historic hourly rates or otherwise” is appropriate. *See also Blackwell v. Foley*,  
25 724 F. Supp. 2d 1068, 1078 (N.D. Cal. 2010) (in an evaluation of an attorney-fee award under, *inter*  
26 *alia*, California Code of Civil Procedure section 1021.5, holding that “Plaintiff’s counsel are entitled  
27 to receive their *current* hourly rates as compensation for the delay in payment”).

28 Relator’s counsel’s fees and costs to prosecute the claims against Defendants are difficult to  
allocate on a defendant-by-defendant basis. Prior to the case entering active litigation, investigative  
and research efforts helped the case as a whole, especially since all Defendants were parties to the  
WSCA Master Contracts with similar “lowest cost available” and “optimization” requirements.  
(Bonn Decl. ¶ 42.) Accordingly, Defendants filed joint demurrers. Even after the Court ruled on

1 the demurrers and discovery began in earnest, it remained difficult to attribute time on many tasks  
2 to any particular defendant. That is because Defendants worked together as part of a joint defense  
3 group, coordinating their discovery efforts and motion practice. For example, defendants served  
4 functionally identical document requests and written discovery on Intervenor and cross-noticed  
5 depositions. (*Id.*) Similarly, it is difficult to assess costs on a defendant-by-defendant basis. Costs  
6 incurred in connection with document hosting, depositions, and expert work benefited Plaintiffs'  
7 case against all defendants.

8 The total amount of attorneys' fees and costs Plaintiffs seek from Verizon and AT&T  
9 combined is \$36,450,000. Of that amount, the Verizon portion is \$23,450,000, or 64% of the total,  
10 and the AT&T portion is \$13,000,000, or 36% of the total. [REDACTED]

11 [REDACTED]  
12 [REDACTED].  
13 The number of hours lead counsel spent prosecuting the claims against Verizon is  
14 reasonable. This is particularly true in light of the complexity of the contracts, the large number of  
15 entities involved, the extraordinary damages to California government entities, and the procedural  
16 history of the case. As discussed in greater detail in Part II.B above and the accompanying  
17 declarations of Ms. Bonn, Mr. Shepard, and Mr. Yampolsky, Relator's counsel expended significant  
18 efforts (1) investigating the matter prior to filing; (2) assisting the California Attorney General's  
19 office with its investigation while the case was under seal; (3) coordinating with the 45 political  
20 subdivisions that initially intervened; (4) briefing and arguing multiple demurrers by Verizon; and  
21 (5) conducting an unprecedented volume of defensive and offensive fact discovery, expert analysis,  
22 and discovery-related motion practice on behalf of 30 separate Intervenor government entities  
23 against Verizon, one of the largest corporations in America.

24 In addition, lead counsel's hourly rates are reasonable. Lead counsel are highly skilled  
25 attorneys who have significant experience representing whistleblowers and government entities in  
26 false-claims actions like this one. Lead counsel are also among the only lawyers in California with  
27 successful experience in multi-party false-claims litigation and the resources to handle a case of this  
28

1 magnitude, which involves representing a relator and intervening government entities in the same  
2 matter.

3 Relator's counsel bore (and continue to bear) the entire risk of litigation: counsel invested  
4 tens of millions of dollars in time and expenses (including over \$7 million in hard costs) without  
5 any guarantee of payment. Counsel persevered in the face of overwhelming obstacles—overcoming  
6 challenges on the merits, exceedingly complicated logistical and technical issues concerning the  
7 production of data, and voluminous discovery that was orders of magnitude higher than counsel can  
8 recollect encountering in any other matter they have ever litigated. Relator's counsel never gave up  
9 and achieved exceptional settlements on behalf of California government entities.

10 Relator therefore respectfully requests that, should any Non-Intervenor object, the Court  
11 approve an award of attorneys' fees and costs from Verizon of \$23,450,000.

12 **VII. CONCLUSION**

13 All aspects of the settlement are fair, reasonable, and in the best interests of all interested  
14 parties, including the Non-Intervenors not before the Court.

15 After receiving consents from Non-Intervenors, Relator will recalculate the allocation of the  
16 settlement amount, to reduce the allocation to Non-Consenting Non-Intervenors by 10%, to just  
17 90% of the amount shown on the Verizon Overall Proposed Allocation. That 10% will then be  
18 reallocated to California Intervenors and California Consenting Non-Intervenors in proportion to  
19 those entities' relevant revenue. The results of these calculations will be set forth in a Verizon  
20 California Final Proposed Allocation that Relator shall submit to the Court in advance of the hearing  
21 on this motion.

22 After the hearing on this motion, the Relator respectfully asks the Court to enter an order,  
23 substantially in the form of the Proposed Order attached hereto as Exhibit A, which shall:

- 24
- 25 • Approve the settlement with Verizon pursuant to the settlement agreement between  
26 the parties and California Government Code section 12652(c)(1);
  - 27 • Approve Plaintiffs' request for \$23,450,000 in attorneys' fees and costs, should there  
28 be any objection to such fees and costs; and
  - Approve the settlement amounts, and bases for those settlement amounts, allocated  
among the Intervenors, the Non-Intervenors, the Relator, and the Relator's counsel,  
as will be shown in the Final Proposed Allocation, as being within the range of

possible approval based on “the best interests of the parties involved” and “the public purposes behind [the CFCA],” pursuant to Government Code section 12652(c)(1).

After the Court enters an Order approving the above items, Plaintiffs then intend to execute and submit to the Court a Stipulated Judgment, substantially in the form of the proposed judgment attached hereto as Exhibit B, which will dismiss the case with prejudice.

DATED: June 12, 2020


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4. The proposed pro rata settlement allocation among the California Plaintiffs based on the Final Allocation set forth in the Final Proposed Allocation (Exhibit A hereto) is fair and reasonable.
5. The Court approves a 25% allocation to Relator from the Intervenor’s gross settlement allocation.
6. The Court approves a 43% allocation to Relator from the Non-Intervenor’s gross settlement allocation.

**IT IS SO ORDERED.**

Dated: \_\_\_\_\_

\_\_\_\_\_  
Hon. Judy Holzer Hersher  
Judge of the Superior Court



**EXHIBIT B—PROPOSED STIPULATED JUDGMENT**

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24 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
25 **FOR THE COUNTY OF SACRAMENTO**

26 STATE OF CALIFORNIA et al., *ex rel.* OnTheGo  
27 Wireless, LLC

28 Plaintiffs,

vs.

CELLCO PARTNERSHIP, doing business as  
VERIZON WIRELESS, et al.

Defendants.

Case No. 34-2012-00127517

**STIPULATED JUDGMENT DISMISSING  
CLAIMS AGAINST THE VERIZON  
DEFENDANTS**

Dept. 92, Hon. Judy Holzer Hersher

**WHEREAS**, Plaintiffs reached a settlement with Defendant Cellco Partnership d/b/a Verizon Wireless (“Verizon”), which settlement was subject to approval by this Court and the satisfaction of conditions agreed to by the Settling Parties;



1  
2 **PROOF OF SERVICE**

3 I, the undersigned, declare:

4 I am employed in the County of Los Angeles, State of California. I am over the age of 18  
5 and not a party to the within action; my business address is 1900 Avenue of the Stars, Suite 1400,  
6 Los Angeles, California 90067-6029.

7 On June 12, 2020, I served the foregoing document(s) described as follows:

8 **NOTICE OF MOTION AND MOTION FOR APPROVAL OF SETTLEMENT WITH  
9 VERIZON; MEMORANDUM OF POINTS & AUTHORITIES**

10 on the interested parties in this action by placing true copies thereof enclosed in sealed envelopes  
11 addressed as stated on the attached service list, as follows:

12        BY MAIL:

13 I am "readily familiar" with the firm's practice of collection and processing correspondence  
14 for mailing. Under that practice, it would be deposited with the U.S. Postal Service on that same  
15 day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of  
16 business. I am aware that on motion of the party served, service is presumed invalid if postal  
17 cancellation date or postage meter date is more than one day after date of deposit for mailing in  
18 affidavit.

19        BY PERSONAL SERVICE:

20 I caused to be delivered such envelope by hand to the offices of the addressee.

21        BY FEDERAL EXPRESS OR OVERNIGHT COURIER

22        BY FAX

23 I served by facsimile as indicated on the attached service list.

24 XX BY ELECTRONIC MAIL


25 I caused said documents to be prepared in portable document format (PDF) for e-mailing  
26 and served by electronic mail as indicated on the attached service list.

27 Executed on June 12, 2020, at Los Angeles, California.

28 XX (State) I declare under penalty of perjury under the laws of the State of California that  
the above is true and correct.

(Federal) I declare that I am employed in the office of a member of the bar of this Court at  
whose direction the service was made.

29 Helen Danielson  
(Type or Print Name)

  
(Signature)

## SERVICE LIST

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