

1 Steve W. Berman
 Jeff D. Friedman (173886)
 2 Shana E. Scarlett (217895)
 HAGENS BERMAN SOBOL SHAPIRO LLP
 3 715 Hearst Avenue, Suite 202
 Berkeley, California 94710
 4 Telephone: (510) 725-3000
 Facsimile: (510) 725-3001
 5 steve@hbsslaw.com
 jeff@hbsslaw.com
 6 shanas@hbsslaw.com

7 Mark Chavez (90858)
 Nance F. Becker (99292)
 8 CHAVEZ & GERTLER LLP
 42 Miller Avenue
 9 Mill Valley, CA 94941
 Telephone: (415) 381-5599
 10 Facsimile: (415) 381-5572
 mark@chavezgertler.com
 11 nance@chavezgertler.com

12 Peter B. Fredman (189097)
 LAW OFFICES OF PETER B. FREDMAN
 13 125 University Avenue, Suite 102
 Berkeley, CA 94710
 14 Telephone: (510) 868-2626
 Facsimile: (510) 868-2627
 15 peterfredman@sbcglobal.net

16 Attorneys for Plaintiffs and all others similarly situated

17 UNITED STATES DISTRICT COURT
 18 NORTHERN DISTRICT OF CALIFORNIA
 19 SAN FRANCISCO DIVISION

20 JOSEPH RUWE and ELIZABETH ORLANDO,)
 21 Individually and on behalf of all others similarly)
 situated,)

22 Plaintiffs,)

23 v.)

24 CELLCO PARTNERSHIP d/b/a VERIZON)
 25 WIRELESS,)

26 Defendant.)

No. 07-cv-03679 JSW

CLASS ACTION

**STIPULATION RE: FILING THIRD
 AMENDED COMPLAINT AND
 [PROPOSED] ORDER REVISING
 PRETRIAL SCHEDULING ORDER**

27 _____)

1 **RECITALS**

2 1. Catherine Gellis commenced this consumer class action, in which she alleged that a
3 provision in Verizon Wireless’s terms and conditions imposing minimum \$5 late fees is an
4 unlawful penalty, and sought injunctive and monetary relief.

5 2. On October 9, 2008, plaintiff amended her complaint to add Joseph Ruwe and
6 Elizabeth Orlando as additional class representatives. Ms. Gellis was subsequently dismissed as a
7 named plaintiff from the action.

8 3. As a result of facts obtained during investigation and discovery in this action, Mr.
9 Ruwe and Ms. Orlando seek to file a Third Amended Complaint. Plaintiffs seek to add allegations
10 that the \$15 “reconnect” fees that Verizon Wireless charges to subscribers whose service it has
11 impaired as a result of subscribers paying late is an additional illegal penalty in violation of
12 California law. Plaintiffs have asked Verizon Wireless to stipulate to the amendment.

13 4. Verizon Wireless disputes the legal basis for plaintiffs’ additional claims and plans
14 to file a motion to dismiss these additional claims. Verizon Wireless has asked for an extended
15 response period due to the press of business and the upcoming holiday season.

16 5. Discovery relating to plaintiffs’ claims and Verizon Wireless’s defenses will
17 proceed during the period Verizon Wireless challenges whether plaintiffs’ additional allegations
18 state claims for which relief may be granted. Verizon Wireless, however, shall not be required to
19 produce information that would be discoverable only with respect to plaintiffs’ claims regarding
20 Verizon Wireless’s practice of charging “reconnect” fees alleged in the amended pleading, until the
21 court rules on its dismissal motion. Plaintiffs reserve the right to contest Verizon Wireless’s
22 position through appropriate means, if they believe that the information would otherwise be
23 discoverable without respect to the additional claims. The parties agree to confer in good faith to
24 try and stage the timing of such discovery to avoid undue burden and expense on either party.

25 6. The parties also agree that with respect to depositions of witnesses who may have
26 information and knowledge pertaining to plaintiffs’ claims regarding Verizon Wireless’s practice
27 of charging “reconnect” fees alleged in the amended pleading shall be taken, if otherwise
28 appropriate, after the court rules on Verizon Wireless’s motion to dismiss, in order to avoid

1 potential duplication or inefficiency. Prior to the Court's ruling on the motion to dismiss, Verizon
2 Wireless will determine in good faith whether any such deponent would in fact cause duplicative
3 discovery depending on the outcome of Verizon Wireless's motion to dismiss. In the event
4 Verizon Wireless chooses not to produce such a witness (or witnesses) prior to the resolution of its
5 motion to dismiss, it agrees to produce any such witnesses no later than thirty (30) days after the
6 Court rules on Verizon Wireless's motion to dismiss.

7 7. The parties agree that the briefing of plaintiffs' motion for class certification should
8 await the resolution of defendant's anticipated motion to dismiss.

9 WHEREFORE the parties stipulate and agree as follows:

10 **STIPULATION**

11 1. Plaintiffs may file the Third Amended Complaint, filed concurrently herewith. As
12 named plaintiff Gellis has been dismissed from the case, the action shall henceforward be known as
13 *Ruwe, et al. v. Verizon Wireless*.

14 2. Verizon Wireless shall have up to and including January 23, 2009, to file a motion
15 to dismiss or answer the new allegations set forth in plaintiffs' Third Amended Complaint.
16 Plaintiffs shall have twenty-one days to file their opposition to defendant's motion to dismiss.
17 Defendant shall have fourteen days to reply to plaintiffs' opposition.

18 3. Both parties shall have the right to propound, and shall have the obligation to
19 respond to, discovery while the motion to dismiss is pending. Verizon Wireless, however, shall not
20 be required to produce information that would be discoverable only with respect to plaintiffs'
21 claims regarding Verizon Wireless's practice of charging "reconnect" fees alleged in the amended
22 pleading, until the court rules on its dismissal motion. Plaintiffs reserve the right to contest
23 Verizon Wireless's position through appropriate means, if they believe that the information would
24 otherwise be discoverable without respect to the additional claims. The parties shall meet and
25 confer to attempt to resolve any such issues.

26 4. Depositions of witnesses who may have information and knowledge with respect to
27 plaintiffs' claims regarding Verizon Wireless's practice of charging "reconnect" fees alleged in the
28 amended pleading shall be taken, if otherwise appropriate, after the court rules on Verizon

1 Wireless's motion to dismiss. Prior to the Court's ruling on the motion to dismiss, Verizon
 2 Wireless will determine in good faith whether any such deponent would in fact cause duplicative
 3 discovery depending on the outcome of Verizon Wireless's motion to dismiss. In the event
 4 Verizon Wireless chooses not to produce such a witness (or witnesses) prior to the resolution of its
 5 motion to dismiss, it agrees to produce any such witnesses no later than thirty (30) days after the
 6 Court rules on Verizon Wireless's motion to dismiss.

7 5. As a result of these developments, the scheduling order should be modified so as to
 8 give plaintiffs sixty (60) days from the date of the court's decision on the motion to dismiss to file
 9 their motion for class certification, and other dates shall be modified consistent with that extension.
 10 The existing scheduling order shall be modified as follows:

	Current Schedule	Proposed Schedule
Defendant to produce deponents it delayed due to potential overlapping discovery	N/A	Decision on MTD + 30 days
Plaintiff to file motion for class certification	January 30, 2009	Decision on MTD + 60 days
Defendant to file opposition to class cert.	March 31, 2009	Plaintiffs' motion for class cert + 60 days
Plaintiff to file reply in support of class cert.	April 30, 2009	Defendants' opposition to class cert + 30 days
Hearing on motion for class certification	May 15, 2009	TBD
Fact discovery cut-off	June 12, 2009	October 16, 2009
Expert discovery cut-off	August 28, 2009	November 27, 2009
Dispositive motions to be filed	September 15, 2009	December 18, 2009
Hearing on dispositive motions	October 30, 2009	January 29, 2010
Pretrial conference	January 11, 2010	April 14, 2010
Trial	February 1, 2010	May 3, 2010

1 DATED: December 1, 2008.

HAGENS BERMAN SOBOL SHAPIRO LLP

2
3 /s/ Jeff D. Friedman

JEFF D. FRIEDMAN

4 Steve W. Berman
5 Shana E. Scarlett (217895)
HAGENS BERMAN SOBOL SHAPIRO LLP
6 715 Hearst Avenue, Suite 202
Berkeley, California 94710
7 Telephone: (510) 725-3000
Facsimile: (510) 725-3001
8 steve@hbsslaw.com
jefff@hbsslaw.com
shanas@hbsslaw.com

9
10 Mark Chavez (90858)
Nance F. Becker (99292)
CHAVEZ & GERTLER LLP
11 42 Miller Avenue
Mill Valley, CA 94941
12 Telephone: (415) 388-5599
Facsimile: (415) 381-5572
13 mark@chavezgerler.com
nance@chavezgerler.com

14
15 Peter Fredman (189097)
LAW OFFICES OF PETER B. FREDMAN
1917 Carleton Street
16 Berkeley, CA 94707
Telephone: (510) 486-8739
17 Facsimile: (510) 486-8739
peterfredman@sbcglobal.net

18
19 *Attorneys for Plaintiffs*

20 DATED: December 1, 2008.

MUNGER, TOLLES & OLSON LLP

21
22 /s/ Hojoon Hwang

HOJOON HWANG

23 560 Mission St., 27th Floor
24 San Francisco, CA 94105-2907
Telephone: (415) 512-4000
25 Facsimile: (415) 512-4077
Hojoon.Hwang@mto.com

26 *Attorneys for Verizon*

~~PROPOSED~~ ORDER

Good cause appearing, the Court hereby approves the parties' stipulation and orders that:

Plaintiffs may file their Third Amended Complaint in this action, which shall hereafter be known as *Ruwe et al. v. Verizon Wireless*.

Defendant may file its motion to dismiss or otherwise respond to the Third Amended Complaint on or before January 23, 2009. Plaintiffs shall have until February 13, 2009 to file their opposition to any motion which Defendant may file, and Defendant shall file its reply by February 27, 2009. The Court reserves March 20, 2009 for hearing on the motion.

The time for Plaintiffs to file their motion for class certification is extended. Plaintiffs shall have up to sixty (60) days after the Court issues its decision on the motion to dismiss to file their opening brief in support of class certification. Defendant shall file its opposition to the motion within sixty (60) days of the motion being filed, and Plaintiffs shall file their reply within thirty (30) days thereafter.

All discovery and dispositive motion deadlines, as well as the date for the pretrial conference and the trial. The new dates are as follows:

Fact discovery cut-off:	October 16, 2009
Expert discovery cut-off:	November 27, 2009
Dispositive motions to be filed:	December 18, 2009
Hearing on dispositive motions:	January 29, 2010
Pretrial conference:	April 14, 2010 April 19, 2010 at 2:00 p.m.
Trial:	May 3, 2010 May 10, 2010 at 8:00 a.m.

Dated: December 2, 2008


Hon. Jeffrey S. White
U.S. District Court Judge