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13 SUPERIOR COURT OF CALIFORNIA

14 COUNTY OF LOS ANGELES

15 THE DEPARTMENT OF FAIR  
16 EMPLOYMENT AND HOUSING, an  
17 agency of the State of California,

18 Plaintiff,

19 vs.

20 VERIZON SERVICES CORPORATION, a  
21 Delaware Corporation, dba VERIZON  
22 CALIFORNIA, INC.,

23 Defendants.

24 ALICIA DENISE SEALES, ALMA  
25 ARANDA, OFELIA CABANA FANOL,  
26 HEATHER DOWL-LEE, VERONICA  
27 BARCELO, ERICA DIAZ, KIMBERLY  
28 GONZALEZ, CYNTHIA MARTINEZ,  
TANYA DENNIS, KATRINA GRANT, and  
a class of similarly situated others,

Real Parties in Interest.

Case No. BC444066

Assigned for all purposes to:  
Hon. Anthony J. Mohr, Dept. 309

MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
JOINT MOTION FOR PRELIMINARY  
APPROVAL OF CLASS ACTION  
SETTLEMENT

Date: November 23, 2010  
Time: 9:00 a.m.  
Place: Dept. 309

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1 INTRODUCTION AND SUMMARY OF ARGUMENT

2 This is a class action filed by the California Department of Fair Employment and Housing  
3 (“DFEH” or the “Department”) on behalf of Real Parties-in-Interest, Alma Aranda, Ofelia  
4 Cabana Fanol, Heather Dowl-Lee, Veronica Barcelo, Erica Diaz, Kimberly Gonzalez, Cynthia  
5 Martinez, Tanya Dennis and Katrina Grant (collectively “Plaintiffs”), against Defendant Verizon  
6 California, Inc.<sup>1</sup> (“Verizon”).<sup>2</sup> In general terms, the complaint in this action alleges that  
7 Verizon’s family leave policies failed to comply with portions of the California Family Rights  
8 Act, Government Code section 12945.1 et seq. (“CFRA”). Pending before this Court is the  
9 Parties’ joint motion to preliminarily approve a class-wide settlement of this action pursuant to a  
10 written settlement agreement that is the product of a two-year investigation, conciliation, and  
11 settlement process involving the DFEH and Verizon.

12 As we will explain in greater detail below, the class settlement of this matter is fair,  
13 reasonable, adequate, and in the best interests of the proposed class. If it is approved, this  
14 settlement will be the largest to have been negotiated by the DFEH<sup>3</sup> in its 50-plus-year history. In  
15 particular, the settlement agreement obligates Verizon to pay over \$6,000,000 to resolve class  
16 member claims; empowers the DFEH itself to administer the claims process, communicate with  
17 individual class members, process class member claims, and award monetary relief to individual  
18 class members in appropriate cases. The Settlement Agreement also obligates Verizon to submit  
19 its now-revised CFRA policies to the Department for review and approval; obligates Verizon to  
20 provide CFRA compliance reports to the DFEH for the next two years; and empowers the DFEH  
21 to review and to audit Verizon’s compliance with the CFRA for the next two years.

22 The DFEH and Verizon have independently evaluated the terms of this settlement, and  
23 fully support all of its terms. For these reasons, and the reasons more fully explained below, the  
24

25 <sup>1</sup> Verizon California, Inc. was erroneously named in the complaint as “Verizon Services  
26 Corporation dba Verizon California, Inc.”

27 <sup>2</sup> Plaintiffs and Verizon are collectively referred to herein as the “Parties.”

28 <sup>3</sup> Prior to 1980, the DFEH’s predecessor agency was the Division of Fair Employment  
Practices in the Department of Industrial Relations. (*Commodore Home Systems, Inc. v. Superior  
Court* (1982) 32 Cal.3d 211, 218, fn. 10.)

1 Parties respectfully request, pursuant to California Rules of Court, rule 3.769, that this Court enter  
2 an order (1) preliminarily certifying the proposed settlement class; (2) appointing the DFEH as  
3 counsel on behalf of the class; (3) provisionally approving all terms of the proposed settlement<sup>4</sup>;  
4 (4) appointing Alma Aranda, Ofelia Cabana Fanol, Heather Dowl-Lee, Veronica Barcelo, Erica  
5 Diaz, Kimberly Gonzalez, Cynthia Martinez, Tanya Dennis and Katrina Grant as class  
6 representatives (“CFRA Class Representatives”); (5) appointing Simpluris, Inc. as the “Claims  
7 Administrator”; (6) approving and authorizing the mailing of class notice; and (7) confirming that  
8 a hearing to fully and finally approve the settlement will be scheduled.

9 **STATEMENT OF FACTS**

10 **A. The Parties.**

11 **1. Verizon.**

12 Verizon is a global communications leader providing, among other things, voice, data and  
13 video services to millions of customers throughout California, and across the nation. Verizon  
14 employs more than 7,000 workers in California, and strives to maintain an inclusive, fair and  
15 healthy work environment for its employees that is free from discrimination and harassment.  
16 Verizon has repeatedly been recognized for its commitment to diversity and for its family-  
17 friendly benefits and policies.

18 **2. The DFEH, Its Special Investigations Unit And Director’s Complaints**  
19 **Of Discrimination.**

20 The DFEH is an administrative agency of the State of California, which is statutorily  
21 empowered to, among other things, investigate and prosecute alleged violations of the Fair  
22 Employment and Housing Act, Government Code section 12940 et seq. (the “FEHA”), in general,  
23 and the CFRA, in particular.<sup>5</sup>

24 \_\_\_\_\_  
25 <sup>4</sup> The terms of the proposed settlement are set forth in the Settlement and Release of all  
26 Claims Agreement (“Settlement Agreement” or “Agreement” or “Settlement”), which is attached  
as Exhibit 1 to the Declaration of Robert A. Naeve (“Naeve Decl.”).

27 <sup>5</sup> Among other things, the FEHA prohibits discrimination and harassment in all aspects of  
28 employment, including hiring, termination and the terms and conditions of employment. (Gov.  
Code, § 12940 et seq.) The CFRA provides for unpaid, protected leave of up to 12 weeks in a 12-  
month period for the birth of a child or care of a newborn, an employee’s own serious health  
condition, or to care for a family member who has a serious health condition. (Gov. Code, §

1           The FEHA grants to the DFEH plenary power to investigate alleged violations of the  
2 CFRA. As the Court may know, individuals who allege that their employers violated the CFRA  
3 must file complaints of discrimination with the DFEH within one year of the alleged violation.  
4 (Gov. Code, § 12960, subd. (d).) The FEHA authorizes the DFEH to investigate these complaints  
5 over a one year period by, among other things, requiring the employer to provide a written  
6 response to a complaint of discrimination, interviewing the complainant and witnesses, and  
7 propounding discovery to the employer, including document requests, interrogatories and  
8 depositions. (Gov. Code, §§ 12963.1-12963.4; Declaration of Tim Muscat (“Muscat Decl.”) ¶ 3.)

9           If, during the course of its investigation, the DFEH identifies possible class-wide  
10 violations of the FEHA or CFRA, the Department has the right to issue a Director’s and/or Class  
11 Action Complaint against the employer, which entitles the DFEH to continue investigating for an  
12 additional year. (Gov. Code, §§ 12961, 12965, subd. (a).) The DFEH’s Special Investigations  
13 Unit, which is specially trained to investigate and prosecute high-impact and high-priority  
14 complaints, is typically assigned to investigate Director’s Complaints. (Muscat Decl., ¶ 5.)

15           As part of this process, the FEHA obligates the DFEH to engage in confidential  
16 conciliation, or settlement discussions, with the employer. (Gov. Code, § 12963.7.) At the  
17 conclusion of the two-year investigation and conciliation period, the DFEH may choose to close  
18 its investigation or, if it concludes that reasonable cause exists to believe that class-wide  
19 discrimination has occurred, and it has not been able to resolve its complaints through  
20 conciliation, file an Accusation with the Fair Employment and Housing Commission (“FEHC”).  
21 An Accusation is similar in form to a civil complaint, except that Accusations are litigated and  
22 tried before an administrative law judge, whose rulings are reviewed by the FEHC. (Gov. Code,  
23 §§ 12967-70.) If the Accusation seeks emotional distress damages or administrative fines, the  
24 employer has the right to proceed to an administrative hearing before the FEHC, or to transfer the  
25 matter to superior court, where it will be heard as an ordinary civil matter. (Gov. Code, § 12965,  
26

27 \_\_\_\_\_  
(continued...)

28 12945.2.)

1 subd. (c)(1).)

2 Pursuant to its statutory mandate, the DFEH vigorously enforces California law with  
3 impressive results. In 2009, the DFEH marked its 50-year anniversary by reporting that 2008 had  
4 been a successful year with a record 20,000-plus cases filed. (Muscat Decl., ¶ 6.) Of these,  
5 18,785 (92%) were related to employment, and more than 7,000 specifically alleged violations of  
6 the CFRA or disability discrimination in violation of the FEHA. (*Ibid.*) The DFEH settled 960  
7 cases in 2008 for more than \$9.5 million, plus affirmative relief. (*Ibid.*) The DFEH enjoyed  
8 similar results last year (fiscal year 2008-2009), with more than 19,300 cases filed, of which more  
9 than 7,900 specifically alleged violations of the CFRA or disability discrimination in violation of  
10 the FEHA. (*Ibid.*) In fiscal year 2008-2009, the DFEH settled 908 cases for more than \$8.9  
11 million, plus affirmative relief. (*Ibid.*)

12 **B. The Litigation And Settlement.**

13 1. **The DFEH Special Investigations Unit Conducted A Two Year-Long**  
14 **Investigation Into Verizon's CFRA Policies And Practices.**

15 Beginning in 2008, the DFEH received a number of complaints from current and former  
16 Verizon employees, some of which alleged that the Company had violated the complainants'  
17 rights to take family and medical leave under the CFRA. (Muscat Decl., ¶ 7.) The DFEH  
18 assigned these claims to the SIU, which thereafter initiated an investigation into Verizon's  
19 policies and practices. (*Ibid.*) In February 2009, the SIU consolidated the claims of four  
20 individual complainants, and issued a Director's Complaint, which alleged that Verizon engaged  
21 in unlawful employment practices in violation of the CFRA, and notified Verizon that the  
22 Department would be investigating possible class-wide violations of the CFRA. (Muscat Decl., ¶  
23 8.)

24 For the next year, the SIU conducted what it believes to be one of the most extensive  
25 investigations in the history of the Department. (Muscat Decl., ¶ 9.) Working closely with  
26 DFEH staff lawyers, the SIU propounded interrogatories and document requests to determine if  
27 Verizon engaged in class-wide violations of the CFRA and the FEHA. (Muscat Decl., ¶ 9; Naeve  
28 Decl., ¶ 3.) The SIU reviewed tens of thousands of pages of responsive documents, obtained

1 from locations in California and Texas, relating to Verizon's administration of its family leave  
2 policies, the interactive process, and the reasonable accommodation process. (*Ibid.*) The SIU  
3 conducted an extensive review of Verizon's individual decisions to grant or deny CFRA leave  
4 requests, and reviewed the individual attendance, leave of absence, and discipline files of  
5 numerous current and former Verizon employees who applied for, and/or were denied, CFRA  
6 leave. (Muscat Decl., ¶ 9.) The SIU attempted to contact more than one hundred current and  
7 former Verizon employees whom the DFEH determined could be at high risk for experiencing  
8 CFRA violations. (Muscat Decl., ¶ 10.) The SIU conducted numerous witness interviews of  
9 current and former Verizon employees. (*Ibid.*) The SIU also obtained information from several  
10 union stewards about the nature and extent of potential CFRA violations at their represented  
11 facilities. (*Ibid.*) The SIU also continued to investigate the individual complaints of current and  
12 former Verizon employees, nine of whom eventually agreed to serve as CFRA Class  
13 Representatives and work with DFEH to prosecute their claims on behalf of a class of similarly-  
14 situated Verizon employees. (*Ibid.*)

15 At the conclusion of its two-year SIU investigation, the DFEH notified Verizon that it had  
16 identified several policies and procedures that resulted in a class of current and former Verizon  
17 employees being (1) improperly denied CFRA leave, (2) disciplined for absences that were  
18 CFRA qualifying, and (3) terminated for taking CFRA-qualifying absences. (Muscat Decl., ¶  
19 11.) For example, the DFEH asserted that Verizon had a policy and practice of requiring  
20 employees to provide more information to support their CFRA leave requests than was authorized  
21 under California law and then improperly denying those requests that failed to provide this  
22 unnecessary information. (Muscat Decl., ¶ 12.) The DFEH also asserted that Verizon denied  
23 CFRA leave requests as untimely even though, in the Department's view, they were timely made.  
24 (Muscat Decl., ¶ 12.) Verizon vigorously disputed the DFEH's findings, and cited to numerous  
25 grounds it asserted were legitimate for the actions it had taken and about which the DFEH  
26 complained. (Naeve Decl., ¶ 5.) In addition, Verizon asserted the Department had identified ten  
27 employees as having been disciplined for CFRA-protected absences, even though Verizon's  
28 records revealed that none of the ten had been disciplined *at all* during the relevant timeframe.

1 (Naeve Decl., ¶ 5.)

2 2. **The Parties Engaged In Five Months Of Intensive Settlement**  
3 **Negotiations.**

4 On or about May 4, 2010, the Department initiated confidential conciliation negotiations  
5 with Verizon. (Muscat Decl., ¶ 13; Naeve Decl., ¶ 6.) Negotiations proceeded in earnest over the  
6 next several weeks as both parties submitted settlement proposals and counterproposals for  
7 consideration. (*Ibid.*) On June 14, 2010, Verizon traveled to the Department's Bay Area  
8 Regional Office in Oakland for in-person settlement negotiations with DFEH representatives.  
9 (Naeve Decl., ¶ 7.) During the June 14 meeting, the Parties negotiated an agreement in principle  
10 to settle the CFRA Action on a class-wide basis; however, they continued to negotiate regarding  
11 the specific terms of the settlement for several more months. (Muscat Decl., ¶ 13; Naeve Decl., ¶  
12 7.) The Parties reached a final agreement on all terms of the Settlement on September 20, 2010.  
13 (Muscat Decl., ¶ 18 ; Naeve Decl., ¶ 11.)

14 3. **The DFEH Filed This Class Action Complaint In Superior Court To**  
15 **Effectuate The Parties' Settlement Agreement.**

16 During the course of conciliation, the DFEH notified Verizon that, pursuant to the FEHA,  
17 it was required to file an Accusation with respect to the Director's Complaint due to the  
18 approaching expiration of the two-year investigatory period. (Muscat Decl., ¶ 14; Naeve Decl., ¶  
19 8.) On June 17, 2010, the DFEH filed a Class Accusation with the FEHC which alleged, on  
20 behalf of a class of current and former Verizon employees, that Verizon engaged in unlawful  
21 employment practices in violation of the CFRA. (Muscat Decl., ¶ 15.) At Verizon's election,  
22 and to effectuate the Parties' settlement, the DFEH withdrew the Accusation and filed this action  
23 (the "CFRA Action" or the "Action") with the Los Angeles Superior Court (the "Court") on  
24 August 19, 2010, so that the class action settlement could be supervised by a Superior Court  
25 Judge. (*Id.* ¶¶ 16-17; Naeve Decl., ¶ 9-10.)

26 C. **The Settlement Will Provide Substantial Relief To Class Members Through A**  
27 **Claims Adjudication Process Administered By The DFEH.**

28 If approved, the Settlement will obligate Verizon to pay up to \$6,011,190.00 ("Maximum

1 Settlement Amount”) -- the largest single settlement in DFEH history -- to resolve the individual  
2 claims of class members. (Muscat Decl., ¶ 19.) The settlement class is defined as “all current  
3 and former Verizon employees who applied to take CFRA-protected leaves of absence from June  
4 18, 2007 to the date upon which this Court enters an order preliminarily approving the  
5 Settlement” (“CFRA Class Members” or “Class Members”). (Naeve Decl., ¶ 11, Ex. 1  
6 (Settlement Agreement (“S.A.”), § 2(a)(i).) As of June 30, 2010, Verizon had identified  
7 approximately 3,840 CFRA Class Members. (Naeve Decl., ¶ 14.) According to Verizon’s  
8 records, fewer than one-third of these CFRA Class Members experienced any denial of a CFRA  
9 leave request.<sup>6,7</sup> (*Ibid.*)

10 Following preliminary approval, Verizon will provide the last known addresses of the  
11 CFRA Class Members to the Claims Administrator,<sup>8</sup> which will send notice of the Settlement to  
12 each Class Member by first class mail. (S.A., § 4(b).) The proposed Notice of Class Action  
13 Settlement, attached as Exhibit A to the Settlement Agreement (“Notice”), describes the key  
14 settlement terms, including the claims adjudication process and the formula the DFEH will apply  
15 to determine each Class Member’s entitlement to a Settlement payment, and explains how Class  
16 Members can participate in the Settlement (by submitting a Claim Form), or opt out of, or object  
17 to, the Settlement within the 60-day “Claims Period.” (S.A., Ex. A.)

18 After the close of the Claims Period, Verizon will provide the DFEH with attendance and  
19

---

20 <sup>6</sup> The Parties agree that CFRA leave requests may properly be denied under certain  
21 circumstances. Accordingly, the Settlement Agreement provides that the DFEH will review the  
22 records of CFRA Class Members who timely submit valid claim forms (“CFRA Claimants”) to  
23 determine (1) whether each CFRA Claimant was qualified to take CFRA leave, (2) whether each  
24 CFRA Claimant properly applied for leave, (3) whether Verizon properly determined whether the  
25 CFRA Claimant was entitled to take CFRA leave, and (4) whether Verizon disciplined or  
26 terminated the CFRA Claimant for CFRA-related absences. (S.A., § 6(a).)

27 <sup>7</sup> With respect to the those CFRA Claimants who were disciplined or terminated, it should  
28 be noted that many of the CFRA Class Members are represented by unions. Naeve Decl. ¶ 13, Ex.  
2. Pursuant to their collective bargaining agreements, these Class Members can only be  
terminated for cause, and all terminations are automatically submitted to the union for grievance  
unless the employee elects to forgo grievance proceedings. (*Ibid.*)

<sup>8</sup> The Parties have selected Simpluris, Inc. to serve as Claims Administrator for the CFRA  
Action. Simpluris, Inc. is a highly-regarded neutral administrator that focuses exclusively on  
class action settlement administration. Members of the Simpluris, Inc. team have administered  
hundreds of class action settlements over the years.

1 employment records for all CFRA Claimants – those CFRA Class Members who timely  
2 submitted valid claim forms. (S.A., §§ 5(b), 6(a).) The DFEH will then conduct an independent  
3 evaluation of each CFRA Claimant’s claim to determine, on a case-by-case basis, (1) whether the  
4 CFRA Claimant experienced a CFRA violation and, if so, (2) the type of violation, and (3) the  
5 appropriate level of damages. The DFEH has identified three (3) types of CFRA violations for  
6 which the Parties have negotiated damages to be paid according to the following formula:

- 7 i. Tier 1: CFRA Claimants who experienced an improper denial of their application  
8 for family and medical leave under the CFRA, but who were not disciplined or  
terminated for CFRA-related absences, will receive \$3,000;
- 9 ii. Tier 2: CFRA Claimants whom the DFEH concludes were subject to discipline  
10 due to CFRA-protected absences, but who were not terminated for using or  
requesting CFRA leave, will receive \$6,000;
- 11 iii. Tier 3: CFRA Claimants whom the DFEH concludes were terminated or  
12 constructively terminated in violation of the CFRA will receive \$25,000.

13 (S.A., §§ 6(b), 6(c).)

14 The DFEH will have the right to (1) adjust individual damage awards as the DFEH  
15 determines appropriate, so long as the variance between the adjusted damage award and the  
16 original damage award calculated pursuant to the formula above does not exceed 20%, and (2)  
17 adjust and prorate the amount of all individual damage awards in the event the total value of all  
18 payments exceeds the Maximum Settlement Amount. (S.A., § 6(c), 6(e).)

19 In addition to the foregoing monetary awards, the Settlement Agreement provides for  
20 prospective relief for all current Verizon employees by requiring Verizon to adopt and implement  
21 policies and procedures designed to facilitate and ensure compliance with the CFRA and the  
22 FEHA. (S.A., § 10.) The Settlement Agreement obligates Verizon to submit its now revised  
23 CFRA leave policies to the DFEH for review and approval and to submit periodic reports to the  
24 DFEH. The Department is empowered to review and audit Verizon’s compliance with these  
25 prospective relief requirements for the next two years. (S.A., §§ 10(b), 10(c).)

26 Notably, although the DFEH will assume responsibility for processing and evaluating  
27 class member claims to ensure that each CFRA Claimant receives a fair and reasonable settlement  
28 award, the DFEH will not charge, or recover, any attorneys’ fees or costs in connection with the

1 Settlement. Further, all costs of administration incurred by the Claims Administrator, other than  
2 postage costs, will be borne by Verizon. (S.A., § 4(e).) Thus, virtually the entire \$6 million-plus  
3 Maximum Settlement Amount will be available to pay CFRA Class Member claims.

#### 4 DISCUSSION

##### 5 I. CLASS ACTION SETTLEMENTS SHOULD BE PRELIMINARILY APPROVED 6 WHEN THE TRIAL COURT CONCLUDES THAT THE TERMS OF THE 7 SETTLEMENT ARE “POTENTIALLY FAIR” OR “WITHIN THE RANGE OF 8 POSSIBLE APPROVAL.”

8 A class action may not be compromised or settled without approval of the Court. (See Civ.  
9 Code, § 1781, subd. (f); Cal. Rules of Court, rule 3.769(a).) Review of a proposed settlement  
10 generally proceeds in two stages, a hearing on preliminary approval followed by a final fairness  
11 hearing. (*Cervantez v. Celestica Corp.* (C.D. Cal. July 6, 2010, No. EDCV 07-729) 2010 WL  
12 2712267, at \*2; *Murillo v. Pacific Gas & Elec. Co.* (E.D. Cal. 2010) 266 F.R.D. 468, 473.) In the  
13 first stage of the approval process, the court preliminarily approves the settlement pending the  
14 final fairness hearing, temporarily certifies the class, and authorizes notice to be given to the  
15 class. (*Ibid.*; Cal. Rules of Court, rule 3.769.) To determine whether preliminary approval is  
16 appropriate, the settlement need only be “potentially fair” or “within the range of possible  
17 approval,” as the Court will make a final determination of its adequacy at the hearing on final  
18 approval, after such time as any party has had a chance to object and/or opt out. (*Acosta v. Trans*  
19 *Union, LLC* (C.D. Cal. 2007) 243 F.R.D. 377, 386); *Murillo*, 266 F.R.D. at p. 479; see also 4  
20 Newberg on Class Actions (4<sup>th</sup> ed. 2010) § 11:25 quoting Fed. Jud. Ctr., Manual for Complex  
21 Litigation (3d ed. 1995) § 30.41 (“If the preliminary evaluation of the proposed settlement does  
22 not disclose grounds to doubt its fairness or other obvious deficiencies . . . and appears to fall  
23 within the range of possible approval, the court should direct that notice . . . be given to the Class  
24 Members of a formal fairness hearing, at which arguments and evidence may be presented in  
25 support of and in opposition to the settlement.”).)

26 To determine whether a settlement is “within the range of possible approval,” the Court  
27 must evaluate whether the Settlement is “fair, reasonable, and adequate,” and ensure that the  
28 agreement is “not the product of fraud or overreaching by, or collusion between, the negotiating

1 parties.” (*In re Nvidia Corp. Derivative Litig.* (N.D. Cal. Dec. 22, 2008, No. C-06-06110) 2008  
2 WL 5382544, at \* 2 quoting *Officers for Justice v. Civil Serv. Comm’n* (9th Cir. 1982) 688 F.2d  
3 615, 625.) The trial court is vested with broad discretion to determine whether a settlement is fair,  
4 reasonable, and adequate. (*Cho v. Seagate Tech. Holdings, Inc.* (2009) 177 Cal.App.4<sup>th</sup> 734, 742-  
5 46; *Cellphone Fee Termination Cases* (“*Cellphone Cases*”) (2010) 186 Cal.App.4<sup>th</sup> 1380, 1389.)  
6 In exercising its discretion, the court should consider relevant factors, which may include, but are  
7 not limited to, the strength of plaintiffs’ case, the risk, expense, complexity and duration of  
8 continued litigation as a class action, the amount offered in settlement, the extent of discovery  
9 completed and the stage of the proceedings, the experience and views of counsel, the presence of  
10 a governmental participant, and the reaction of class members to the proposed settlement. (*Ibid.*;  
11 see also *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4<sup>th</sup> 399, 407;  
12 *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4<sup>th</sup> 1794, 1801.) This list of factors is not exhaustive  
13 and should be tailored to each case. (*Ibid.*)

14 In applying these factors, due regard should be given to what is otherwise a private  
15 consensual agreement between the parties. (*Cho*, 177 Cal.App.4<sup>th</sup> at p.743; *Cellphone Cases*, 186  
16 Cal.App.4<sup>th</sup> at p. 1389.) Such regard limits its inquiry “to the extent necessary to reach a  
17 reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion  
18 between, the negotiating parties, and that the settlement, taken as a whole, is fair reasonable, and  
19 adequate to all concerned.” (*Ibid.*) The trial court may presume that the settlement is fair, so long  
20 as it is the result of arm's-length negotiation; investigation and discovery are sufficient to allow  
21 counsel and the court to act intelligently; and counsel is experienced at similar litigation. (*Cho*,  
22 177 Cal.App.4<sup>th</sup> at p. 743; *Cellphone Cases*, 186 Cal. App. 4<sup>th</sup> at p. 1389; *Dunk*, 48 Cal.App.4<sup>th</sup> at  
23 p. 1802; *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4<sup>th</sup> 224, 245.)

24 **II. THE SETTLEMENT IN THIS CASE SHOULD BE PRELIMINARILY**  
25 **APPROVED BECAUSE IT IS BOTH FAIR, AND WITHIN THE RANGE OF**  
26 **APPROVAL.**

27 We demonstrate in the paragraphs that follow that this Court should preliminarily  
28 conclude that the Settlement Agreement negotiated by the DFEH and Verizon is both fair and  
within the range of approval.

1           **A. Defendant Would Assert Numerous Challenges To Plaintiffs' Ability to**  
2           **Establish Class-wide Liability.**

3           Examination of the first fairness factor, the strength of plaintiffs' case, highlights the  
4           fairness and adequacy of the Parties' Settlement Agreement. As explained above, the DFEH is  
5           the administrative agency charged with enforcing the CFRA in California. The DFEH believes  
6           that it can establish Verizon's liability on a class-wide basis for violation of the CFRA. Verizon  
7           contests the DFEH's conclusions, and believes it has numerous available legal and factual  
8           grounds for defending this Action, which would be aggressively asserted should litigation  
9           proceed. As an initial matter, Verizon denies that it *improperly* denied CFRA leave, and observes  
10          that there are several lawful reasons to deny CFRA leave. For example, in order to be eligible for  
11          leave, an employee must have worked for the company for at least one year, and must have  
12          worked for at least 1250 hours in the preceding 12 months. (Gov. Code, § 12945.2, subd. (a).)  
13          Any employee who has already exhausted his or her 12 week annual CFRA leave allotment  
14          would not be entitled to additional CFRA leave for another year. (*Ibid.*) Further, a leave request  
15          may properly be denied as untimely or incomplete. (See Cal. Code Regs., tit. 2, § 7297.4.)

16          Verizon also vigorously denies that it has disciplined or terminated any employees for  
17          requesting or taking CFRA leave. Verizon asserts it disciplines its employees for numerous,  
18          legitimate reasons wholly unrelated to the CFRA. For example, Verizon claims the Department  
19          identified ten CFRA-denied employees as having been disciplined for CFRA-related reasons,  
20          even though Verizon asserts its records reveal that none of these ten employees had been  
21          disciplined at all. (Naeve Decl., ¶ 5.)

22          Because of the numerous bases that Verizon believes exist for denying requests for CFRA  
23          leave and for rendering employee discipline, Plaintiffs would be required to litigate class-wide  
24          liability in the absence of this Settlement. Verizon believes that liability determinations in this  
25          case would require individualized inquiry that would not be amenable to class-wide treatment in  
26          the absence of the DFEH's continued involvement and agreement to adjudicate Class Member  
27          claims on a case-by-case basis.  
28

1           **B. Continued Litigation Of This Matter Would Be At Significant Risk And**  
2           **Expense Whereas The Settlement Affords Timely Relief To Class Members.**

3           The second fairness factor, “the risk, expense, complexity, and duration of continued  
4 litigation as a class action,” also strongly favors approval. As explained above, in the absence of  
5 the Settlement, Verizon would assert numerous arguments against class-wide liability. As such,  
6 Verizon would argue that certification of the proposed class is improper and would result in  
7 hundreds of mini-trials regarding whether a particular plaintiff’s leave was properly denied,  
8 and/or whether a particular employee was justifiably disciplined or terminated.

9           Further, Verizon believes plaintiffs would be required to establish that the harm and  
10 resulting damages alleged are amendable to class treatment in the absence of actual monetary loss.  
11 While the CFRA entitles eligible employees to take up to 12 weeks of leave in a 12-month period  
12 for family and medical care, leave under the CFRA is unpaid. (Gov. Code, § 12945.2, subd. (d).)  
13 Therefore, even if the DFEH determines that a CFRA Claimant was improperly denied leave, or  
14 improperly disciplined for taking leave, Verizon asserts that no economic loss would be  
15 associated with the denial. The DFEH, however, asserts that improper loss of valuable benefits  
16 could occur in this situation. For one example, a claimant may have used vacation time -- a  
17 valuable benefit the claimant earned through working -- in lieu of the denied CFRA leave.  
18 Notwithstanding this disagreement, in compromise of the charges, the Settlement provides that  
19 Tier 1 and Tier 2 CFRA Claimants will receive a settlement payment even though Verizon  
20 believes they did not experience any monetary loss as a result of the alleged wrongful conduct.

21           In addition to any potential economic loss, these settlement payments are intended to  
22 compensate CFRA Class Members for any emotional distress they *may* have suffered in  
23 connection with the denial or discipline. However, emotional distress damages may not be  
24 amenable to class treatment. (See *Fuhrman v. Cal. Satellite Sys.* (1986) 179 Cal.App.3d 408, 425  
25 (“Perhaps no cause of action is less susceptible to a class action than one for infliction of  
26 emotional distress.”) overruled on other grounds in *Silberg v. Anderson* (1990) 50 Cal.3d 205,  
27 212; *Tenants Ass’n v. Southers* (1990) 222 Cal.App.3d 1293, 1304 (holding emotional distress  
28 damages are “too intangible and too inherently personal to the individual to reasonably constitute

1 a community of interest.”.)

2 Finally, even if successful, Plaintiffs’ efforts to certify a class action and then litigate this  
3 matter to conclusion would likely take many months, if not years, at significant cost to the State  
4 of California and delay in recovery to the class. By contrast, the Settlement, and Verizon’s  
5 Maximum Settlement Amount of \$6,011,190.00, ensures timely relief and substantial recovery to  
6 CFRA Class Members.

7 **C. The Amount Offered In Settlement Is Fair And Reasonable.**

8 Third, the recovery offered to CFRA Class Members is substantial and strongly favors  
9 approval of the Settlement. As an initial matter, the DFEH has concluded, after an exhaustive  
10 investigation into the nature and scope of potential class member claims, that the proposed  
11 settlement awards are fair, reasonable, and adequate. (Muscat Decl., ¶¶ 9, 10, 18.) The DFEH’s  
12 conclusion in this regard is entitled to considerable weight. (*Equal Employment Opportunity*  
13 *Comm’n v. Faribault Foods, Inc.* (D. Minn. Mar. 28, 2008, No. 07-3976) 2008 WL 879999, at  
14 \*4.) Further, the \$6,011,190.00 Maximum Settlement Amount is the largest settlement in DFEH  
15 history. (Muscat Decl., ¶ 19.) By contrast, in 2009, the DFEH settled 908 cases for a *combined*  
16 total of \$8.9 million. (Muscat Decl., ¶ 6.) Impressive statistics aside, it is important to  
17 understand what the individual awards seek to compensate to fully appreciate the value of the  
18 proposed Settlement:

19 **1. Eligible Claimants Will Receive Awards of \$3,000 to \$30,000 Without**  
20 **Having To Litigate Their Claims.**

21 CFRA Claimants whom the DFEH determines are eligible to receive a settlement payment  
22 will receive \$3,000 to \$30,000 in exchange for timely returning a completed claim form -- that is  
23 all they have to do. These CFRA Claimants will receive a settlement payment without (1) hiring  
24 counsel, (2) filing an administrative claim, (3) filing a lawsuit, (4) producing documents, (5)  
25 being deposed, or (6) paying a portion of any recovery they obtain to their attorneys. In other  
26 words, they will receive fair monetary awards without ever having to litigate their claims.  
27 Furthermore, because of the one-year deadline for filing administrative complaints with the  
28 DFEH, any of these claims that arose more than one year ago would otherwise be time-barred.

1 (Gov. Code, § 12960, subd. (d).)

2 **2. Tier 1 and 2 Claimants Will Receive Monetary Awards Even Though**  
3 **They May Have Suffered No Economic Loss.**

4 As discussed above, Tier 1 and Tier 2 CFRA Claimants will receive damage awards even  
5 though they may not have suffered any monetary loss. If the DFEH determines that a CFRA  
6 Claimant was improperly denied leave, that Claimant would automatically be entitled to receive a  
7 maximum Tier 1 payment of \$3,000 (which the DFEH has discretion to increase to \$3,600).  
8 (S.A., §§ 6(b)(i), 6(c).) This remains true, even if he or she suffered no direct economic loss.

9 Similarly, if the DFEH determines that a CFRA Claimant was improperly disciplined in  
10 violation of the CFRA, such Tier 2 Claimant would be entitled to receive a maximum payment of  
11 \$6,000 (which the DFEH has discretion to increase to \$7,200) even though the employee retained  
12 his or her position following the discipline and therefore, likewise, may not have suffered  
13 economic loss. (S.A., §§ 6(b)(ii), 6(c).) Given that some Tier 1 and Tier 2 CFRA Claimants  
14 may not have suffered any monetary loss in connection with Verizon's alleged conduct, it is  
15 unlikely that these individuals would pursue or obtain *any* recovery in the absence of this  
16 Settlement.

17 **3. Tier 3 Claimants Will Receive Substantial and Fair Awards.**

18 CFRA Claimants whom the DFEH concludes are entitled to Tier 3 damages will receive  
19 substantial settlement payments of between \$25,000 to \$30,000 for claims that they had not  
20 asserted on their own. (S.A. §§ 6(b)(iii), 6(c).) Verizon notes that many of the CFRA Class  
21 Members are represented by unions and, pursuant to their collective bargaining agreements,  
22 cannot be terminated without cause. (Naeve Decl., ¶ 13.) Further, union member terminations  
23 are automatically grieved, and challenges to Verizon's termination decisions, including whether  
24 such terminations were violative of any law, are routinely raised during the grievance process.  
25 (*Ibid.*) Following a failed grievance, union members can, and often do, prosecute their claims  
26 administratively through the DFEH and/or through civil litigation. Accordingly, to the extent the  
27 DFEH identifies any CFRA Claimants whom it believes are entitled to a Tier 3 payment, Verizon  
28 asserts it is highly likely that such Claimant did not feel strongly enough about the merits of his or

1 her case to pursue the matter individually. Thus, Verizon believes that such Claimant would not  
2 receive *any* compensation, much less a substantial award of \$25,000 to \$30,000, absent the  
3 Settlement Agreement.

4 **4. The Settlement Provides Prospective Relief To Verizon Employees.**

5 In addition to the more than \$6 million in monetary relief discussed above, the Settlement  
6 Agreement provides significant, prospective non-monetary relief that will benefit all Verizon  
7 employees and facilitate Verizon's continued compliance with California's family and medical  
8 leave laws. For example, the Settlement Agreement requires Verizon to submit its revised CFRA  
9 leave policies to the DFEH for review and approval. (S.A., §§ 10(a)(i), 10(a)(ii), 10(a)(iii).) The  
10 Settlement Agreement also obligates Verizon to provide semi-annual CFRA-compliance reports  
11 to the DFEH, and empowers the DFEH to review and audit Verizon's compliance with the CFRA  
12 for two years following final approval. (S.A., § 10(b).) Combined with the substantial monetary  
13 relief described above, the benefits afforded to Class Members under the Settlement Agreement  
14 strongly favor approval.

15 **D. The Parties Engaged In Significant Discovery Over Two Years.**

16 The fourth fairness factor, which focuses on the extent of discovery completed and the  
17 stage of the proceedings, also favors a finding that the settlement is fair, reasonable, adequate and  
18 in the best interests of the class. As noted above, the DFEH conducted a two-year-long  
19 investigation during which it had ample opportunity, and availed itself of the right, to engage in  
20 extensive discovery and investigation. The DFEH also propounded written discovery, both  
21 interrogatories and requests for production of documents, and conducted an extensive review of  
22 Verizon policies, practices, and procedures with respect to CFRA leaves of absence, the  
23 interactive process, and the reasonable accommodation process. The DFEH also reviewed  
24 Verizon's attendance records, leave of absence records, and discipline files. To date, Verizon has  
25 produced tens of thousands of pages of documents in response to the Department's requests. In  
26 addition, the DFEH contacted and/or interviewed more than one hundred current and former  
27 employees and union representatives and completed full investigations into the claims of Verizon  
28 employees who filed individual complaints with the Department. The DFEH took all steps

1 necessary to evaluate the claims asserted in the Action pursuant to Government Code section  
2 12963 of the FEHA.

3 **E. The DFEH Believes The Settlement Is Fair.**

4 The fifth and sixth fairness factors, “the experience and views of counsel” and the  
5 “presence of a governmental participant,” patently support a finding that the class settlement of  
6 this Action is fair, reasonable, and adequate for several related reasons. First and foremost, this  
7 settlement was *not* negotiated by private litigants and attorneys; instead, it was negotiated by the  
8 DFEH itself. This factor is of critical importance: As noted above, the DFEH did not seek to  
9 recover attorneys’ fees and costs as part of the settlement. Hence, one of the primary fairness  
10 concerns arising in the class action settlement context -- that class counsel will sell out the class to  
11 obtain large fees -- is entirely absent here. (See e.g., *Zucker v. Occidental Petroleum Corp.* (9th  
12 Cir. 1999) 192 F.3d 1323, 1329, fn.20 (stating the “evil feared in some [class action] settlements  
13 [is] unscrupulous attorneys negotiating large attorney’s fees at the expense of an inadequate  
14 settlement for the client”).)

15 The presence of the DFEH in this action is also of critical importance because the  
16 Department is uniquely qualified to value the many claims that might be presented during the  
17 settlement process. As noted above, the Department receives approximately 7,000 complaints  
18 alleging violations of the CFRA and the FEHA, annually. In each of the past two years, the  
19 DFEH negotiated more than 900 settlements totaling approximately \$9 million, plus affirmative  
20 relief. The settlement values here fall easily within the range of settlements the DFEH regularly  
21 negotiates with other similarly-situated individual and class complainants in lieu of litigation.  
22 (Muscat Decl., ¶ 18.) The DFEH’s conclusions regarding the reasonableness of the negotiated  
23 Settlement support a finding that the Settlement awards are fair, reasonable, and adequate. (See  
24 *Faribault Foods, Inc., supra*, (2008) 2008 WL 879999, at \*4 (according weight to the EEOC’s  
25 view that a proposed class action settlement was fair); *Cho*, 177 Cal.App.4<sup>th</sup> at p. 743 (the mere  
26 “presence of a governmental participant” supports approval).)

27 **F. The Settlement Is Presumptively Fair.**

28 Finally, the settlement is entitled to a presumption of fairness because the settlement was

1 negotiated at arm's length, following sufficient discovery to permit the parties and the Court to  
2 act intelligently, and counsel are experienced in similar litigation. (*Cho*, 177 Cal.App.4<sup>th</sup> at p.  
3 743.) As described above, the Settlement Agreement is the product of many months of intensive  
4 negotiation between Verizon and the DFEH, a governmental agency. Further, settlement  
5 negotiations did not even begin until the DFEH had completed nearly two years of extensive  
6 investigation. Finally, the DFEH has unparalleled expertise in prosecuting similar litigation on  
7 behalf of thousands of California residents every year. This presumption of fairness, coupled  
8 with the fact that the Settlement Agreement easily satisfies all six of the relevant fairness factors  
9 discussed above, assures that the proposed class-wide Settlement of this Action is fair,  
10 reasonable, and adequate, and should be approved by the Court.

11 **III. CONDITIONAL CERTIFICATION IS APPROPRIATE.**

12 The Parties request that the Court provisionally certify the proposed class for settlement  
13 purposes only. (See Cal. Rules of Court, rule 1859(d) (“The court may make an order approving  
14 or denying certification of a provisional settlement class after the preliminary settlement  
15 hearing”).) Under California law, the prerequisites for class certification are and should be  
16 substantially relaxed for “settlement classes” as opposed to the standards applied in ordinary  
17 certification proceedings. (See, e.g., *Wershba*, 91 Cal.App.4<sup>th</sup> at pp. 237-44; *Dunk*, 48  
18 Cal.App.4<sup>th</sup> at pp. 1805-07.) For example, evidentiary hearings to address certification issues are  
19 not required. (See *Wershba*, 91 Cal.App.4<sup>th</sup> at pp. 240-41.) Further, unlike federal law,  
20 California law does not require trial courts to scrutinize the prerequisites to certification, or make  
21 findings as to whether the usual certification prerequisites are satisfied in settlement cases. (*Dunk*,  
22 48 Cal.App.4<sup>th</sup> at pp. 1805-06 (“No findings were required . . .”) and at p. 1807, fn.19; *Wershba*,  
23 91 Cal.App.4<sup>th</sup> at pp. 239-40.) Instead, heightened concerns over the appropriateness of  
24 settlement classes are satisfied by a careful fairness review of the settlement by the trial court.  
25 (*Wershba*, 91 Cal.App.4<sup>th</sup> at pp. 239-40.)

26 Further, Plaintiffs contend that provisional certification is appropriate here because the  
27 proposed class satisfies the requirements for class certification.<sup>9</sup> “Section 382 of the Code of

28 <sup>9</sup> Verizon has stipulated to certification of the CFRA Class for settlement purposes only.

1 Civil Procedure authorizes class suits in California when ‘the question is one of a common or  
2 general interest, of many persons, or when the parties are numerous, and it is impracticable to  
3 bring them all before the court.’” (*Lockheed Martin Corp. v. Super. Ct.* (2003) 29 Cal.4<sup>th</sup> 1096,  
4 1103-04.) The burden is on the party seeking certification to establish the existence of both an  
5 ascertainable class and a well-defined community of interest among the class members. (*Ibid.*)  
6 The “community of interest” element embodies three factors: (a) predominant questions of law  
7 or fact; (b) class representatives with claims or defenses typical of the class; and (c) class  
8 representatives who can adequately represent the class. (*Dunk*, 48 Cal.App.4<sup>th</sup> at p. 1806.) The  
9 “ultimate question” is whether “maintenance of a class action would be advantageous to the  
10 judicial process and to the litigants.” (*Lockheed Martin Corp.*, 29 Cal.4<sup>th</sup> at pp. 1104-05.)

11 **A. The Proposed Settlement Class Is Ascertainable.**

12 Plaintiffs assert that the proposed settlement class is ascertainable because all of the Class  
13 Members have worked for Verizon and may be readily identified through Verizon’s electronic  
14 attendance management system. Indeed, Verizon has already ascertained and identified 3,840  
15 California employees who applied for CFRA leave between June 18, 2007 and June 30, 2010 --  
16 also demonstrating that the proposed class is sufficiently numerous to warrant class treatment.

17 **B. The CFRA Class Members Share A Community Of Interest.**

18 **1. Common Questions Predominate.**

19 Plaintiffs allege that the first community of interest factor is satisfied because common  
20 questions of law and fact predominate. Plaintiffs need not show that all issues in the litigation are  
21 identical to satisfy the commonality requirement. Here, Plaintiffs allege that Verizon had a class-  
22 wide policy and practice of improperly denying CFRA leave. The common questions therefore  
23 include whether Verizon improperly denied valid and timely requests for protected leave  
24 submitted by the CFRA Class Members, and whether the CFRA Class Members were disciplined

25 \_\_\_\_\_  
26 (continued...)

27 Verizon reserves its right to object to class certification on any applicable grounds should the  
28 Court not approve the Settlement, or should the Settlement not become final for any other reason.  
DFEH reserves the right to argue that it may proceed with litigating this action without meeting  
the class certification requirement of section 382 of the Code of Civil Procedure.

1 or terminated for absences that would have been CFRA-protected but for the improper denial, or  
2 whether they were disciplined for applying for, or taking, approved CFRA leave.

3 **2. Plaintiffs' Claims Are Typical Of The Class.**

4 The typicality requirement is met if the claims of the named representatives are typical of  
5 those of the class, though "they need not be substantially identical." (*Hanlon v. Chrysler Corp.*  
6 (9th Cir. 1998) 150 F.3d 1011, 1020; *Classen v. Weller* (1983) 145 Cal.App.3d 27, 46-47.)

7 Plaintiffs assert that the second commonality factor is satisfied, and the CFRA Class

8 Representatives claims are typical of the class, because their claims arise from the same factual  
9 bases and are based on the same legal theories as those applicable to the Class Members.

10 Plaintiffs also meet the typicality requirement because they are members of the class they seek to  
11 represent. Seven of the CFRA Class Representatives are current Verizon employees and two are  
12 former Verizon employees. All nine applied for CFRA leave during the class period. Further, the  
13 Class Representatives were subject to the same Verizon policies and procedures governing  
14 requests for CFRA leave, and were also subject to the same Verizon attendance and discipline  
15 policies.

16 **3. The CFRA Class Representatives Will Adequately Represent The**  
17 **Class.**

18 The third and final community of interest factor, adequacy of representation, is easily  
19 satisfied here. Plaintiffs can adequately represent the class where they are represented by  
20 qualified counsel and have interests aligned with those of the class. (*McGhee v. Bank of Am.*  
21 (1976) 60 Cal.App.3d 442, 450-51; *Hanlon*, 150 F.3d at p. 1020.) The CFRA Class  
22 Representatives are working with the DFEH, which is well qualified to represent the interests of  
23 the class. In addition, the Class Representatives' interest in prosecuting the case and obtaining  
24 the most beneficial recovery possible fully comport with the interests of the class because all  
25 CFRA Class Members are entitled to receive damages pursuant to a pre-established formula  
26 based on the injury suffered. (S.A., § 6(b).) Further, any CFRA Class Member who wishes to  
27 opt out of the Settlement is free to do so. (S.A., § 5(e).) Thus, no conflict of interest exists  
28 between the CFRA Class Representatives and the CFRA Class.

1                   4.       **Because The DFEH Has Agreed To Adjudicate Class Member Claims,**  
2                                   **Maintenance Of This Class Action Is Both Advantageous To The**  
3                                   **Judicial Process And To The Litigants.**

4                   Finally, class resolution under the terms of the Settlement Agreement is superior to other  
5                   available methods for the fair and efficient adjudication of the controversy. Here, the alternative  
6                   method of resolution involves individual claims with, in potentially some cases, no economic  
7                   damages. These claims “would prove uneconomic for potential plaintiffs” because “litigation  
8                   costs would dwarf potential recovery.” (*Hanlon*, 150 F.3d at p. 1023.) Because the DFEH has  
9                   agreed to assume responsibility for assessing, on a case-by-case basis, whether CFRA Claimants  
10                  are entitled to a settlement payment, CFRA Class Members are assured fair treatment, while  
11                  avoiding the inefficiency and delay associated with litigating such claims in court. (See S.A.,  
12                  § 6.)

13                  **IV. THE PROPOSED NOTICE IS REASONABLE AND SHOULD BE APPROVED.**

14                  Class action notice is sufficient if (1) it has “a reasonable chance of reaching a substantial  
15                  percentage of the class members;” and (2) its contents “fairly apprise[s] the class members of the  
16                  terms of the proposed compromise and of the options open to dissenting class members.”  
17                  (*Wershba*, 91 Cal.App.4th at p. 251; Cal. Rules of Court, rule 3.766(d).) The Court is afforded  
18                  broad discretion in determining appropriate notice to class members. (*Cellphone Cases*, 186  
19                  Cal.App.4<sup>th</sup> at p. 1390.)

20                  **A. Individual Notice By Mail Will Reach Most, If Not All, Class Members.**

21                  Notice will be sent via first class mail to CFRA Class Members based on the last known  
22                  address contained in Verizon’s files, as updated by the Claims Administrator through a national  
23                  change of address search. (S.A., § 4(b).) The Claims Administrator will promptly re-mail any  
24                  Notice returned with a forwarding address and will take reasonable and necessary steps to re-mail  
25                  Notices returned as undeliverable without a forwarding address. (S.A., § 4(c).)

26                  **B. The Notice Contains Ample Information To Fairly Apprise Class Members**  
27                  **Of The Settlement’s Terms And Their Available Options.**

28                  Further, the proposed Notice contains a clear and accurate description of the key  
29                  settlement terms. (See Cal. Rules of Court, rule 3.766(d).) The Notice (1) defines the settlement  
30                  class; (2) describes the allegations made in the Action; (3) explains that the Settlement was

1 entered into on a “no-fault” basis; (4) describes how to participate in the settlement by submitting  
2 a Claim Form and how to opt out of, or object to, the Settlement; (5) explains the claims  
3 adjudication procedure and the formula that will be used to determine each CFRA Class  
4 Member’s entitlement to a settlement payment; and (6) informs CFRA Class Members of the  
5 claims they will be releasing if they do not request exclusion from the Settlement and a final  
6 judgment is entered in this case. (See S.A., Ex. A (Notice); Cal. Rules of Court, rule 3.766(d).)  
7 The proposed Notice complies with the standards of fairness, completeness and neutrality  
8 required of a settlement class notice disseminated under authority of the Court. (See S.A., Ex. A  
9 (Notice); Cal. Rules of Court, rule 3.766(d); see also *Cellphone Cases*, 186 Cal.App.4<sup>th</sup> at pp.  
10 1390-93.)

11 **V. THE PROPOSED ENHANCEMENTS ARE REASONABLE.**

12 The DFEH has the right, but not the obligation, to make enhanced damage awards to the  
13 nine CFRA Class Representatives. (S.A., § 6(d).) Courts routinely approve incentive awards to  
14 compensate named plaintiffs for the services they provide and the risks they incurred during the  
15 course of the class action litigation. (*Cellphone Cases*, 186 Cal.App.4<sup>th</sup> at p. 1394 (incentive  
16 awards are appropriate if “necessary to induce an individual to participate in the suit”); *Munoz*,  
17 186 Cal.App.4<sup>th</sup> at p. 412 (upholding enhancement payments that doubled recovery for the class  
18 representatives).) Courts also consider whether the litigation will further public policy underlying  
19 the statutory scheme. (*Roberts v. Texaco, Inc.* (S.D.N.Y. 1997) 979 F.Supp. 185, 201-02, fn.25.)

20 In this case, public policy strongly favors the award of enhancements to the CFRA Class  
21 Representatives because these nine individuals were contacted by the DFEH and specifically  
22 asked to participate in the Action, and to assert claims on behalf of a class. (Muscat Decl., ¶¶ 10,  
23 20.) Further, the CFRA Class Representatives assisted the DFEH’s investigation and prosecution  
24 of the case by, among other things, participating in interviews, providing documents, and helping  
25 the DFEH understand the nature and extent of potential claims, the types of employees most  
26 likely to be affected, and the range of factual scenarios most likely to result in violations of the  
27 CFRA and the FEHA. (Muscat Decl., ¶ 21.) Finally, each CFRA Class Representative undertook  
28 considerable risk by agreeing to participate in this litigation. All but two of the CFRA Class

1 Representatives are still employed by Verizon and have thus consented to serve as class  
2 representatives in litigation against their current employer. (Muscat Decl., ¶ 22.) The risk to the  
3 two former employee Class Representatives lies in having their participation become a matter of  
4 public record and potentially affecting their ability to secure future employment.

5 **VI. SCHEDULING THE FINAL APPROVAL HEARING.**

6 Once the number of CFRA Claimants is ascertained, Verizon and the DFEH will agree on  
7 a schedule by which CFRA Claimant records are to be produced, and the DFEH's determinations  
8 shall be completed. (S.A., § 6(g).) Verizon and the DFEH will also agree on a date for a fairness  
9 hearing for the Court to consider final Settlement approval ("Final Settlement Approval  
10 Hearing"), and will jointly move the Court for the entry of an Order and Judgment, which will set  
11 the date of the Final Settlement Approval Hearing. (*Ibid.*) All CFRA Class Members will be  
12 provided advance written notice of the date, time and location of the Final Settlement Approval  
13 Hearing. (S.A., Ex. A (Notice) at p. 3.)

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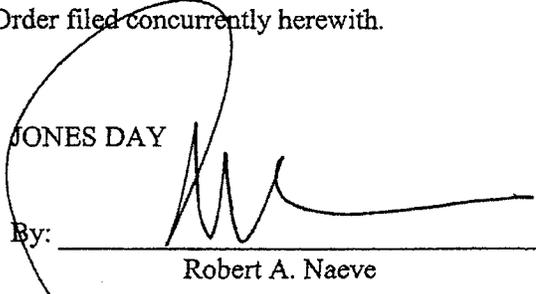
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CONCLUSION

For all the foregoing reasons, the Parties respectfully request that the Court preliminarily approve the Settlement and enter the proposed Order filed concurrently herewith.

Dated: November 8, 2010

JONES DAY

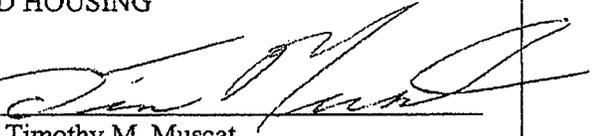
By: 

Robert A. Naeve

Attorneys for Defendant  
Verizon Services Corporation dba Verizon  
California, Inc.

Dated: November 5, 2010

DEPARTMENT OF FAIR EMPLOYMENT  
AND HOUSING

By: 

Timothy M. Muscat

Attorneys for the California Department of  
Fair Employment and Housing

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**PROOF OF SERVICE BY MAIL**

I am a citizen of the United States and employed in Los Angeles County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 555 South Flower Street, Fiftieth Floor, Los Angeles, California 90071-2300. I am readily familiar with this firm's practice for collection and processing of correspondence for mailing with the United States Postal Service. On November 8, 2010, I placed with this firm at the above address for deposit with the United States Postal Service a true and correct copy of the within document(s):

**MEMORANDUM OF POINTS AND AUTHORITIES IN  
SUPPORT OF JOINT MOTION FOR PRELIMINARY  
APPROVAL OF CLASS ACTION SETTLEMENT**

in a sealed envelope, postage fully paid, addressed as follows:

Susan Saylor  
Bruce W. Carter  
DFEH  
1515 Clay Street, Suite 701  
Oakland, CA 94612  
Attorneys for Plaintiff

Following ordinary business practices, the envelope was sealed and placed for collection and mailing on this date, and would, in the ordinary course of business, be deposited with the United States Postal Service on this date.

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

Executed on November 8, 2010, at Los Angeles, California.

  
Jennifer Gutierrez