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11 **UNITED STATES DISTRICT COURT**
12 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

13 HEATHER STERN, on behalf of
herself and all others similarly situated,

14 Plaintiff,

15 v.

16 AT&T MOBILITY CORPORATION
f/k/a CINGULAR WIRELESS
CORPORATION, et al.,

17 Defendants.

CASE NO. CV 05-8842 CAS (CTx)

**[PROPOSED] ORDER GRANTING
PRELIMINARY APPROVAL OF THE
UCC SETTLEMENT IN STERN II**

Hearing Date: May 17, 2010
Time: 10:00 a.m.
Courtroom: 5

18 PAUL LOZANO, on behalf of himself
and all others similarly situated,

19 Plaintiff,

20 v.

21 AT&T WIRELESS SERVICES, INC.,
et al.,

22 Defendants.

Hon. Christina A. Snyder, presiding

CASE NO. CV 02-0090-CAS (AJWx)

23 HEATHER STERN, on behalf of
herself and all others similarly situated,

24 Plaintiff,

25 v.

26 NEW CINGULAR WIRELESS
SERVICES, INC. f/k/a AT&T
27 WIRELESS SERVICES, INC., et al.,

28 Defendants.

CASE NO. SACV 09-1112-CAS (AGRx)

**CONSOLIDATED FOR
COORDINATED SETTLEMENT
APPROVAL PURPOSES ONLY**

Case Nos. CV 05-8842; CV 02-0090; SACV 09-1112

[PROPOSED] ORDER GRANTING PRELIMINARY APPROVAL OF
THE UCC SETTLEMENT IN STERN II

1 Plaintiffs moved this Court, on April 14, 2010, for an Order preliminarily
 2 approving the UCC Settlement Agreement in *Stern v. New Cingular Wireless*
 3 *Services, Inc. f/k/a AT&T Wireless Services, Inc., et al.*, Case No. SACV 09-1112
 4 CAS (AGRx) ("*Stern II*"), certifying the UCC Settlement Class in *Stern II*,
 5 approving the unified notice and claims administration program proposed for the
 6 Settlements of the Consolidated Cases,¹ and establishing a schedule for final
 7 approval proceedings for the Settlements of the Consolidated Cases, and on April
 8 21, 2010, Defendants joined in Plaintiffs' motion (collectively, the "Preliminary
 9 Approval Motion").

10 Upon considering the Preliminary Approval Motion, including all of the
 11 supporting papers filed by Plaintiffs and Defendants, the UCC Settlement
 12 Agreement and Release (the "UCC Settlement Agreement"),² the arguments of
 13 counsel and other materials relevant to this matter, and good cause appearing, it is
 14 **ORDERED** that:

15 1. Subject to further consideration by the Court at the time of the Fairness
 16 Hearing, the Court finds that the UCC Settlement Agreement was entered into at
 17 arms length by experienced counsel and only after extensive arms length
 18 negotiations, and the Court preliminarily approves the UCC Settlement as fair,
 19 reasonable and adequate to the UCC Settlement Class (defined herein) and as falling
 20 within the range of possible final approval such that it is appropriate to order
 21

22 _____
 23 ¹ The Consolidated Cases are *Stern v. AT&T Mobility Corp f/k/a Cingular Wireless*
 24 *Corp*, Case No. CV 05-8842 CAS (CTX) ("*Stern I*"), *Lozano v. AT&T Wireless*
 25 *Services, Inc., et al.*, Case No. CV 02-0090 CAS (AJWx) ("*Lozano*"), and *Stern II*.
 These cases are consolidated for settlement purposes only.

26 ² The UCC Settlement Agreement relates to claims brought in *Stern II, Randolph, et*
 27 *al. v. AT&T Wireless Services, Inc., et al.*, Case No. RG05193855 (Alameda
 Superior Court, California) and *Schnall, et al. v. AT&T Wireless Services, Inc., et*
 28 *al.*, Case No. 02-2-05776-4 (King County Superior Court, Washington) (the
 "Actions").

1 dissemination of notice of the UCC Settlement to potential members of the UCC
2 Settlement Class in the manner set forth herein below.

3 Class Certification

4 2. For purposes of the UCC Settlement only, the Court certifies under
5 Federal Rule of Civil Procedure 23(a) and (b)(3) the following settlement class (the
6 "UCC Settlement Class"):

7 All customers of AT&T Wireless Services, Inc. and any entity that,
8 prior to October 26, 2004, was affiliated with AT&T Wireless
9 Services, Inc., including but not limited to AT&T Wireless Services of
10 California, Inc. ("AWS"), who reside in the United States and its
11 territories who paid, and were not previously refunded or credited,
12 universal connectivity charges. The Class Period for the UCC
13 Settlement Class is from March 1, 1999 through the Effective Date of
14 the UCC Settlement Agreement (the "UCC Class Period"). The
15 Effective Date is the first date when all of the following events shall
16 have occurred: (a) the entry of the Final Approval Order by the Court,
17 following the completion of the Class Notice Program and the Fairness
18 Hearing; and (b) the statutory deadline for filing an appeal has expired,
19 or if an appeal is taken, the date when the appeal has been decided or
20 resolved in such a way as to leave the Final Approval Order in effect
21 and the time for any further appeal or review has expired.

22 3. Excluded from the UCC Settlement Class are:

- 23 a. Current and former employees, officers, directors, agents, or legal
- 24 representatives of AWS or AT&T Mobility ("ATTM") and their
- 25 affiliated entities;
- 26 b. Government agencies;
- 27 c. Persons who were subscribers to any pre-paid rate plan;
- 28 d. Persons with a Corporate B2B account; and

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e. Any person who had an outstanding balance due on his or her account with AWS at the time that his or her AWS service was terminated, unless such outstanding balance and all associated fees have been paid in full.

4. To be eligible for the benefit of an \$7 check, a member of the UCC Settlement Class must declare, under penalty of perjury, that:

- a. The Class Member was not aware at the time of subscribing that the UCC would be charged;
- b. It would have made a difference to the Class Member had he/she known about the UCC at the time of subscribing; and
- c. If the Class Member is a former AWS customer, the Class Member's AWS account was paid in full prior to submission of the Claim Form.

5. The Court preliminarily finds, solely for purposes of considering this Settlement, that the requirements of Federal Rule of Civil Procedure 23 are satisfied, including the requirements that:

- a. the members of the UCC Settlement Class are so numerous that joinder of all Settlement Class Members is impracticable;
- b. there are questions of law and fact common to the UCC Settlement Class, which predominate over any individual question(s);
- c. the claims of the representative plaintiffs are typical of the claims of the other members of the UCC Settlement Class;
- d. the representative plaintiffs and Class Counsel have fairly and adequately represented and protected the interests of the UCC Settlement Class; and
- e. a class action is superior to alternative means of resolving the claims and disputes at issue in this action.

6. The Court hereby appoints: (i) J. Paul Gignac of Arias Ozzello & Gignac, LLP, (ii) Peter J. Bezek and Robert Curtis of Foley Bezek Behle & Curtis

1 LLP, (iii) David Breskin of Breskin Johnson & Townsend PLLC, (4) William W.
2 Houck of the Houck Law Firm, and (5) Hunter Pyle of Sundeen, Salinas & Pyle as
3 Class Counsel for purposes of the UCC Settlement only. The Court preliminarily
4 finds that Class Counsel and the UCC Class Representatives, Heather Stern, Martin
5 Schnall, Nathan Riensche, Kelly Lemons, John Girard, and Brooke Randolph will
6 fairly and adequately represent and protect the interests of the absent members of
7 the UCC Settlement Class.

8 7. The UCC Settlement Agreement shall be used for settlement purposes
9 only. The fact of, or any provision contained in, the UCC Settlement Agreement or
10 any action taken pursuant to it shall not constitute an admission of the validity of
11 any claim or any factual allegation that was or could have been made by Plaintiffs
12 and members of the UCC Settlement Class in the Actions or of any wrongdoing or
13 liability of any kind on the part of AWS, ATTM, or any of the Defendants. The
14 UCC Settlement Agreement shall not be offered or be admissible in evidence by or
15 against Defendants or any Released Parties (as defined in the UCC Settlement
16 Agreement) or cited or referred to in any other action or proceeding, except: (a) in
17 any action or proceeding brought by or against the Parties to enforce or otherwise
18 implement the terms of the UCC Settlement Agreement, or (b) in any action
19 involving Plaintiffs, members of the UCC Settlement Class, or any of them, in
20 which the allegations are based on the same factual bases and allegations set forth in
21 this case, to support a defense of res judicata, collateral estoppel, release, waiver or
22 other theory of claim preclusion, issue preclusion, or similar defense.

23 8. Pending further orders by this Court, all proceedings in this case (other
24 than proceedings pursuant to this Order) shall be stayed and all members of the
25 UCC Settlement Class who do not request exclusion from the UCC Settlement Class
26 in the manner required by this Order shall be enjoined from commencing or
27 prosecuting the Actions or any action, suit, proceeding, claim, or cause of action in
28 any jurisdiction or court against AWS, ATTM or any of the Defendants relating to

1 or arising out of the UCC claims in the Actions or the claims released under the
2 UCC Settlement Agreement.

3 Notice Plan

4 9. The Court finds that the Notice Plan, as described in the papers
5 supporting the Preliminary Approval Motion, including, but not limited to, the
6 Declaration of Jeanne Finegan, signed April 21, 2010, the Supplemental Declaration
7 of Jeanne Finegan, signed May 10, 2010, the Supplemental Declaration of Steven P.
8 Rice, signed May 11, 2010 (the "Supplemental Rice Declaration"), and the
9 Supplemental Brief regarding Dissemination of Notice to the Class Members, dated
10 May 11, 2010, satisfies Federal Rule of Civil Procedure 23 and is approved. The
11 Court finds that the Notice Plan: (a) constitutes the best notice practicable under the
12 circumstances, (b) shall constitute due and sufficient notice to the UCC Settlement
13 Class of the pendency of the Action, of certification of the UCC Settlement Class, of
14 the terms of the proposed UCC Settlement Agreement, of their right to exclude
15 themselves from, or object to, the proposed settlement, and of the Fairness Hearing,
16 and (c) fully complies with United States law.

17 10. The Court finds that the use of a single, unified notice procedure in
18 each of the Consolidated Cases is particularly appropriate because members of the
19 *Stern I* and *Lozano* Settlement Classes are included within the class of persons who
20 will receive notice of the UCC Settlement. Consequently, the use of a single,
21 unified notice procedure will eliminate the need for similar but separate notices,
22 reduce Class Member confusion, and benefit Class Members in all three of the
23 Consolidated Cases. Accordingly, the Court directs the Parties to provide the notice
24 described in the Notice Plan, as follows:

25 a. Bill Inserts: ATTM shall insert the Short Form Class Notice (in
26 substantially the same form as Exhibit A to the Supplemental Rice
27 Declaration) into the paper bills sent to reasonably ascertainable
28 potential members of the UCC Settlement Class who: (i) are current

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ATTM subscribers, (ii) consistently have been subscribers of AWS, Cingular, and ATTM from 2004 through the present, and (iii) receive monthly paper bills from ATTM. The monthly paper bill shall also contain the Bill Message in substantially the same form as Exhibit E to the Supplemental Rice Declaration.

b. Email Notice: The Claims Administrator shall send an email containing the Short Form Class Notice and a link to the Long Form Class Notice (in substantially the same form as Exhibit B to the Supplemental Rice Declaration) on the Settlement Website to: (a) reasonably ascertainable potential members of the UCC Settlement Class who are current ATTM subscribers, and who consistently have been subscribers of AWS, Cingular, and ATTM since 2004 but who do not receive paper bills and for whom ATTM has email addresses, and (b) reasonably ascertainable potential members of the UCC Settlement Class who are former AWS subscribers associated with unique subscriber IDs and who have email addresses on record with ATTM.

c. Publication Notice: the Court directs publication of the Short Form Class Notice in one edition each of the following newspapers and magazines:

- Parade
- USA Weekend
- Newsweek
- Sports Illustrated
- People
- Newspapers generally circulated in the U.S. Territories.

In addition, the Court directs an online advertising campaign in which the settlements are advertised as “banner ads” on websites,

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such as Facebook, Hotmail, Yahoo, Yahoo Mail, AOL and AOL E-Mail. The banner ads shall be in substantially the same form as the examples provided in Exhibits G and H to the Supplemental Rice Declaration.

d. Website: The Claims Administrator will establish a Settlement website at www.awsettlement.com, which will contain information about the Settlements, including each of the Settlement Agreements in the Consolidated Cases, the Long Form Class Notice, the Claim Form (in substantially the same form as Exhibit D to the Supplemental Rice Declaration), and contact information for Class Counsel. The website will also include an online Claim Form.

e. Press Release: A Press Release regarding the settlement shall be issued in substantially the same form as Exhibit F to the Supplemental Rice Declaration.

f. Toll-free Telephone Number: The Claims Administrator shall establish a toll-free telephone number that will provide pre-recorded information about the Settlements in the Consolidated Cases (substantially following the script set out as Exhibit I to the Supplemental Rice Declaration) and that will permit callers to request a Long Form Class Notice and a Claim Form to be mailed to them.

Each of these communications shall be translated into Spanish and disseminated in a manner intended to reach Spanish speaking Class Members.

11. The Court approves as to form and content and authorizes the use of the Short Form Class Notice, the Long Form Class Notice, the Bill Message, the Banner Ads, the Press Release, the Website, and the Script for the Toll-free Telephone Number substantially similar to those attached as Exhibits A-C and E-I to the Supplemental Rice Declaration. The Court approves as to form and content and

1 authorizes the use of a Claim Form substantially similar to that attached as Exhibit
2 D to the Supplemental Rice Declaration. The Parties may change the notices or the
3 Claim Form to reflect operative hearing and opt-out dates and deadlines or other
4 presently unknown data without further approval from the Court. The Parties shall
5 begin to disseminate notice as described in this order no later than July 1st
6 , 2010 (the "Notice Date"). The issuance of all notice described in the Notice
7 Plan shall be complete within forty-five days after the Notice Date, no later than
8 August 15, 2010 (the "Notice Completion Date").

9 Claims Administration

10 12. The Court approves the Garden City Group, Inc. as the Claims
11 Administrator for the settlements in the Consolidated Cases.

12 13. Members of the UCC Settlement Class who wish to be excluded from
13 the UCC Settlement Class must submit a written Request for Exclusion to the
14 Claims Administrator postmarked no later than forty-five (45) days after the Notice
15 Completion Date, September 29, 2010 (the "Opt-Out Deadline"). Members
16 of more than one settlement class certified in the Consolidated Cases may submit a
17 single Request for Exclusion. The Request for Exclusion must: (a) reference the
18 class member's AWS mobile telephone number(s), (b) identify each of the
19 Settlement Classes in the Consolidated Cases from which the class member requests
20 exclusion, (c) be personally signed by the individual class member, and (d) be sent
21 to:

22 AWS Settlement Claims Administrator
23 c/o The Garden City Group, Inc.
24 P.O. Box 9482
25 Dublin, OH 43017-4582

26 Within 14 days after the Opt-Out Deadline, by October 13, 2010, the
27 Claims Administrator shall deliver to Class Counsel and counsel for the Defendants
28 a complete list of all valid Requests for Exclusion.

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1 14. Any member of the UCC Settlement Class who elects to be excluded
2 shall not: (i) be entitled to receive any of the benefits of the UCC Settlement; (ii) be
3 bound by the release of any claims pursuant to the UCC Settlement Agreement; (iii)
4 be bound by any orders or judgment in *Stern II*; (iv) gain any rights by virtue of the
5 UCC Settlement Agreement; or (v) be entitled to object to the UCC Settlement or
6 appear at the Fairness Hearing.

7 15. Members of the UCC Settlement Class who do not submit a Request
8 for Exclusion in compliance with the deadlines and other specifications set forth in
9 this Order shall remain part of the UCC Settlement Class and shall be bound by all
10 proceedings, orders, and judgments of this Court pertaining to the UCC Settlement
11 Class.

12 16. Any members of the UCC Settlement Class who do not submit a
13 Request for Exclusion in compliance with the deadlines and other specifications set
14 forth in this Order will be allowed to submit claims beginning on the Notice Date.
15 The deadline to submit a claim shall be February 13, 2010, which is ninety
16 (90) days after the Fairness Hearing is held.

17 17. Any member of the UCC Settlement Class who does not submit a valid
18 and timely Request for Exclusion may object to the UCC Settlement Agreement or
19 to Class Counsel's application for attorneys' fees and costs and incentive awards.
20 Any such member of the UCC Settlement Class shall have the right to appear and be
21 heard at the Fairness Hearing, either personally or through an attorney retained at
22 the class member's own expense. The deadline for filing with the Court and service
23 of any objections to the UCC Settlement Agreement shall be forty-five (45) days
24 after the Notice Completion Date, September 29, 2010.

25 18. Any objection to the UCC Settlement must specify that it relates to the
26 UCC Settlement and must be filed in *Stern v. AT&T Mobility Corp., et al.*, Case No.
27 CV 05-8842 CAS (CTx) ("*Stern I*") and served on William W. Houck of the Houck
28 Law Firm, for Plaintiffs, and Steven P. Rice of Crowell & Moring, for Defendants.

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1 Additionally, any objection must provide the UCC Settlement Class member's name
2 and address, contact telephone number, AWS mobile telephone number, and
3 signature (or the signature of his or her representative). Any such objection must
4 state the reasons for the objection and, if the UCC Settlement Class member would
5 like to appear at the Fairness Hearing, provide a statement indicating his or her
6 intent to appear. Only members of the UCC Settlement Class who have filed and
7 served valid and timely objections with notices of intention to appear shall be
8 entitled to be heard at the Fairness Hearing.

9 19. The Fairness Hearing shall be held before this Court on
10 November 15, 2010, ^{at 12:00 NOON} to address whether the proposed UCC Settlement should
11 be finally approved as fair, reasonable and adequate. The Parties must submit their
12 Motion for Final Approval of the settlement and any supporting papers, including
13 declarations attesting to compliance with the notice procedures set forth in this
14 Order, no later than October 15, 2010.

15 20. Class Counsel shall file any Motion for attorneys' fees, expenses, and
16 incentive awards for the Class Representatives (the "Motion for Attorneys' Fees")
17 no later than September 15, 2010 and also shall post the Motion for
18 Attorneys' Fees on the Settlement website by September 16, 2010. The
19 hearing on the Motion for Attorneys' Fees shall be heard before this Court on
20 November 15, 2010, at 12:00 NOON.

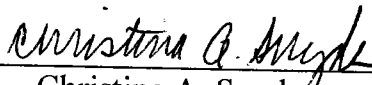
21 21. The Court may, for good cause, extend any of the deadlines sets forth
22 in this Order without further notice to the members of the UCC Settlement Class.
23 The Fairness Hearing may, from time to time and without further notice to the
24 members of the UCC Settlement Class, be continued by order of the Court.

25 22. In the event that the proposed UCC Settlement is not approved by the
26 Court, or in the event that the UCC Settlement Agreement becomes null and void
27 pursuant to its terms, this Order and all orders in connection therewith shall become
28 null and void, shall be of no further force and effect, and shall not be used or

1 referred to for any purposes whatsoever in this action or in any other case or
2 controversy.

5 IT IS SO ORDERED:

7 DATED: May 17, 2010



Christina A. Snyder
United States District Judge

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