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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.

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.

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. CV 05-8842 CAS (CTx)

**[PROPOSED] ORDER GRANTING  
PRELIMINARY APPROVAL OF THE  
LOZANO SETTLEMENT**

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

Hon. Christina A. Snyder, presiding

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

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 LOZANO SETTLEMENT

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1 Plaintiffs moved this Court, on April 14, 2010, for an Order preliminarily  
2 approving the Settlement Agreement in *Lozano v. AT&T Wireless Services, Inc., et*  
3 *al.*, Case No. CV 02-0090 CAS (AJWx) (“*Lozano*”), certifying a Settlement Class in  
4 *Lozano*, approving the unified notice and claims administration program proposed  
5 for the Settlements of the Consolidated Cases,<sup>1</sup> and establishing a schedule for final  
6 approval proceedings for the Settlements of the Consolidated Cases, and on April  
7 21, 2010, Defendants joined in Plaintiffs’ motion (collectively, the “Preliminary  
8 Approval Motion”).

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

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

22 \\  
23 \\  
24

25 \_\_\_\_\_  
26 <sup>1</sup> The Consolidated Cases are *Stern v. AT&T Mobility Corporation f/k/a Cingular*  
27 *Wireless Corporation, et al.*, Case No. CV 05-8842 CAS (CTx) (“*Stern I*”), *Lozano,*  
28 *Inc. et al.*, Case No. SACV 09-1112 CAS (AGRx) (“*Stern II*”). These cases are  
consolidated for settlement purposes only.

1 Class Definition

2 2. The *Lozano* Settlement Class is defined as:

3 All persons who are residents of the State of California, who initiated  
4 cellular telephone service with AT&T Wireless Services, Inc. and any  
5 entity that, prior to October 26, 2004, was affiliated with AT&T  
6 Wireless Services, Inc. ("AWS") under a "One Rate-type" plan on or  
7 after March 1, 1999, and who, at any time during the Class Period  
8 were charged by AWS for cellular telephone calls during a billing  
9 period other than the billing period in which the calls were made. The  
10 Class Period is from March 1, 1999 through the Effective Date of the  
11 *Lozano* Settlement Agreement (the "*Lozano* Class Period"). The  
12 Effective Date is the first date when all of the following events shall  
13 have occurred: (a) the entry of the Final Approval Order by the Court,  
14 following the completion of the Class Notice Program and the Fairness  
15 Hearing; and (b) the statutory deadline for filing an appeal has expired,  
16 or if an appeal is taken, the date when the appeal has been decided or  
17 resolved in such a way as to leave the Final Approval Order in effect  
18 and the time for any further appeal or review has expired.

19 3. Excluded from the *Lozano* Settlement Class are:

- 20 a. Current and former employees, officers, directors, agents, or legal  
21 representatives of AWS or AT&T Mobility ("ATTM") and their  
22 affiliated entities;
- 23 b. Government agencies;
- 24 c. Persons who were subscribers to any pre-paid rate plan;
- 25 d. Persons with a Corporate B2B account; and
- 26 e. Persons who have an outstanding balance due on their AT&T  
27 Wireless account that was terminated during the Class Period, of  
28

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1           eight dollars (\$8.00) or more (determined as of the date Notice is  
2           sent to the Settlement Class).

3           4.     To be eligible for the benefit of either (i) an \$8 check or (ii) a 250  
4 minute calling card, a member of the *Lozano* Settlement Class must declare, under  
5 penalty of perjury, that when he or she signed up for a One Rate-type plan with  
6 AWS, he or she did not understand that calls made during one billing cycle may be  
7 charged as if made in another billing cycle.

8           5.     The Court hereby appoints: (i) J. Paul Gignac of Arias Ozzello &  
9 Gignac, LLP, and (ii) Peter J. Bezek and Robert Curtis of Foley Bezek Behle &  
10 Curtis LLP as Class Counsel for purposes of the *Lozano* Settlement only. The Court  
11 preliminarily finds that Class Counsel and ~~Heather Stern~~ <sup>Paul Lozano</sup>, the *Lozano* Class  
12 Representative, will fairly and adequately represent and protect the interests of the  
13 absent members of the *Lozano* Settlement Class.

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

28

*ad*

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1 estoppel, release, waiver or other theory of claim preclusion, issue preclusion, or  
2 similar defense.

3 7. Pending further orders by this Court, all proceedings in this case (other  
4 than proceedings pursuant to this Order) shall be stayed and all members of the  
5 *Lozano* Settlement Class who do not request exclusion from the *Lozano* Settlement  
6 Class in the manner required by this Order shall be enjoined from commencing or  
7 prosecuting any action, suit, proceeding, claim, or cause of action in any jurisdiction  
8 or court against AWS, ATTM or any of the Defendants relating to or arising out of  
9 the subject matter of this action or the claims released under the *Lozano* Settlement  
10 Agreement.

11 Notice Plan

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

25 9. The Court finds that the use of a single, unified notice procedure in  
26 each of the Consolidated Cases is particularly appropriate because members of the  
27 *Stern I* and *Lozano* Settlement Classes are included within the class of persons who  
28 will receive notice of the UCC Settlement. Consequently, the use of a single,

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1 unified notice procedure will eliminate the need for similar but separate notices,  
2 reduce Class Member confusion, and benefit Class Members in all three of the  
3 Consolidated Cases. Accordingly, the Court directs the Parties to provide the notice  
4 described in the Notice Plan, as follows:

5 a. Bill Inserts: ATTM shall insert the Short Form Class Notice (in  
6 substantially the same form as Exhibit A to the Supplemental Rice  
7 Declaration) into the paper bills sent to reasonably ascertainable  
8 potential members of the UCC Settlement Class<sup>2</sup> who: (i) are  
9 current ATTM subscribers, (ii) consistently have been subscribers  
10 of AWS, Cingular, and ATTM from 2004 through the present, and  
11 (iii) receive monthly paper bills from ATTM. The monthly paper  
12 bill shall also contain the Bill Message in substantially the same  
13 form as Exhibit E to the Supplemental Rice Declaration.

14 b. Email Notice: The Claims Administrator shall send an email  
15 containing the Short Form Class Notice and a link to the Long Form  
16 Class Notice (in substantially the same form as Exhibit B to the  
17 Supplemental Rice Declaration) on the Settlement Website to: (a)  
18 reasonably ascertainable potential members of the UCC Settlement  
19 Class who are current ATTM subscribers, and who consistently  
20 have been subscribers of AWS, Cingular, and ATTM since 2004 but  
21 who do not receive paper bills and for whom ATTM has email  
22 addresses, and (b) reasonably ascertainable potential members of  
23 the UCC Settlement Class who are former AWS subscribers  
24

25  
26  
27 <sup>2</sup> The UCC Settlement Class is certified in the Order Granting Preliminary Approval  
28 to the *Stern II* Settlement, issued concurrently herewith and filed in both *Stern I* and  
*Stern II*.

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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:

- o Parade
- o USA Weekend
- o Newsweek
- o Sports Illustrated
- o People
- o 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, 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.awssettlement.com](http://www.awssettlement.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.

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

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

10 10. The Court approves as to form and content and authorizes the use of the  
11 Short Form Class Notice, the Long Form Class Notice, the Bill Message, the Banner  
12 Ads, the Press Release, the Website, and the Script for the Toll-free Telephone  
13 Number substantially similar to those attached as Exhibits A-C and E-I to the  
14 Supplemental Rice Declaration. The Court approves as to form and content and  
15 authorizes the use of a Claim Form substantially similar to that attached as Exhibit  
16 D to the Supplemental Rice Declaration. The Parties may change the notices or the  
17 Claim Form to reflect operative hearing and opt-out dates and deadlines or other  
18 presently unknown data without further approval from the Court. The Parties shall  
19 begin to disseminate notice as described in this order no later than July 1,  
20 2010 (the "Notice Date"). The issuance of all notice described in the Notice  
21 Plan shall be complete within forty-five days after the Notice Date, no later than  
22 August 15, 2010 (the "Notice Completion Date").

23 Claims Administration

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

26 12. Members of the *Lozano* Settlement Class who wish to be excluded  
27 from the *Lozano* Settlement Class must submit a written Request for Exclusion to  
28 the Claims Administrator postmarked no later than forty-five (45) days after the

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1 Notice Completion Date, September 29, 2010 (the "Opt-Out Deadline").  
2 Members of more than one settlement class certified in the Consolidated Cases may  
3 submit a single Request for Exclusion. The Request for Exclusion must: (a)  
4 reference the class member's AWS mobile telephone number(s), (b) identify each of  
5 the Settlement Classes in the Consolidated Cases from which the class member  
6 requests exclusion, (c) be personally signed by the individual class member, and (d)  
7 be sent to:

8           AWS Settlement Claims Administrator  
9           c/o The Garden City Group, Inc.  
10           P.O. Box 9482  
11           Dublin, OH 43017-4582

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

15           13. Any member of the *Lozano* Settlement Class who elects to be excluded  
16 shall not: (i) be entitled to receive any of the benefits of the *Lozano* Settlement; (ii)  
17 be bound by the release of any claims pursuant to the *Lozano* Settlement  
18 Agreement; (iii) be bound by any orders or judgment in *Lozano*; (iv) gain any rights  
19 by virtue of the *Lozano* Settlement Agreement; or (v) be entitled to object to the  
20 *Lozano* Settlement or appear at the Fairness Hearing.

21           14. Members of the *Lozano* Settlement Class who do not submit a Request  
22 for Exclusion in compliance with the deadlines and other specifications set forth in  
23 this Order shall remain part of the *Lozano* Settlement Class and shall be bound by  
24 all proceedings, orders, and judgments of this Court pertaining to the *Lozano*  
25 Settlement Class.

26           15. Any members of the *Lozano* Settlement Class who do not submit a  
27 Request for Exclusion in compliance with the deadlines and other specifications set  
28 forth in this Order will be allowed to submit claims beginning on the Notice Date.

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1 The deadline to submit a claim shall be February 13, 2010, which is ninety  
2 (90) days after the Fairness Hearing is held.

3 16. Any member of the *Lozano* Settlement Class who does not submit a  
4 valid and timely Request for Exclusion may object to the *Lozano* Settlement  
5 Agreement or to Class Counsel's application for attorneys' fees and costs and  
6 incentive awards. Any such member of the *Lozano* Settlement Class shall have the  
7 right to appear and be heard at the Fairness Hearing, either personally or through an  
8 attorney retained at the class member's own expense. The deadline for filing with  
9 the Court and service of any objections to the *Lozano* Settlement Agreement shall be  
10 forty-five (45) days after the Notice Completion Date, September 29 2010.

11 17. Any objection to the *Lozano* Settlement must specify that it relates to  
12 the *Lozano* Settlement and must be filed in *Stern v. AT&T Mobility Corp., et al.*,  
13 Case No. CV 05-8842 CAS (CTx) ("*Stern I*") and served on Robert A. Curtis of  
14 Foley Bezek Behle & Curtis LLP, for Plaintiffs, and Steven P. Rice of Crowell &  
15 Moring, for Defendants. Additionally, any objection must provide the *Lozano*  
16 Settlement Class member's name and address, contact telephone number, AWS  
17 mobile telephone number, and signature (or the signature of his or her  
18 representative). Any such objection must state the reasons for the objection and, if  
19 the *Lozano* Settlement Class member would like to appear at the Fairness Hearing,  
20 provide a statement indicating his or her intent to appear. Only members of the  
21 *Lozano* Settlement Class who have filed and served valid and timely objections with  
22 notices of intention to appear shall be entitled to be heard at the Fairness Hearing.

23 18. The Fairness Hearing shall be held before this Court on  
24 November 15, 2010, <sup>at 12:00 noon</sup> to address whether the proposed *Lozano* Settlement  
25 should be finally approved as fair, reasonable and adequate. The Parties must  
26 submit their Motion for Final Approval of the settlement and any supporting papers,  
27 including declarations attesting to compliance with the notice procedures set forth in  
28 this Order, no later than October 15, 2010.

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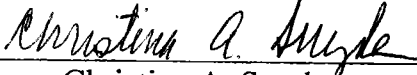
19. Class Counsel shall file any Motion for attorneys' fees, expenses, and incentive awards for the Class Representatives (the "Motion for Attorneys' Fees") no later than September 15, 2010 and also shall post the Motion for Attorneys' Fees on the Settlement website by September 14, 2010. The hearing on the Motion for Attorneys' Fees shall be heard before this Court on November 15, 2010, at 12:00 Noon.

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

21. In the event that the proposed *Lozano* Settlement is not approved by the Court, or in the event that the *Lozano* Settlement Agreement becomes null and void pursuant to its terms, this Order and all orders in connection therewith shall become null and void, shall be of no further force and effect, and shall not be used or referred to for any purposes whatsoever in this action or in any other case or controversy.

IT IS SO ORDERED:

DATED: May 17, 2010

  
Christina A. Snyder  
United States District Judge