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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  
STERN / 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

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1 Plaintiffs moved this Court, on April 14, 2010, for an Order preliminarily  
2 approving the Settlement Agreement in *Stern v. AT&T Mobility Corporation f/k/a*  
3 *Cingular Wireless Corporation, et al.*, Case No. CV 05-8842 CAS (CTx) ("*Stern*  
4 *I*"), certifying a Settlement Class in *Stern I*, approving the unified notice and claims  
5 administration program proposed for the Settlements of the Consolidated Cases,<sup>1</sup>  
6 and establishing a schedule for final approval proceedings for the Settlements of the  
7 Consolidated Cases, and on April 21, 2010, Defendants joined in Plaintiffs' motion  
8 (collectively, the "Preliminary Approval Motion").

9 Upon considering the Preliminary Approval Motion, including all of the  
10 supporting papers filed by Plaintiffs and Defendants, the *Stern I* Settlement  
11 Agreement and Release (the "*Stern I* 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 *Stern I* 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 *Stern I* Settlement as fair,  
18 reasonable and adequate to the *Stern I* 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 *Stern I* Settlement to potential members of the *Stern I*  
21 Settlement Class in the manner set forth herein below.

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26 <sup>1</sup> The Consolidated Cases are *Stern I, Lozano v. AT&T Wireless Services, Inc., et al.*,  
27 Case No. CV 02-0090 CAS (AJWx) ("*Lozano*"), and *Stern v. New Cingular*  
28 *Wireless Services, Inc. f/k/a AT&T Wireless Services, Inc. et al.*, Case No. SACV  
09-1112 CAS (AGRx) ("*Stern II*"). These cases are consolidated for settlement  
purposes only.

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1 Class Certification

2 2. For purposes of the *Stern I* Settlement only, the Court certifies under  
3 Federal Rule of Civil Procedure 23(a) and (b)(3) the following settlement class (the  
4 “*Stern I* Settlement Class”):

5 All persons who are residents of the United States or its territories,  
6 who, whether as a new customer or as a preexisting customer,  
7 subscribed with AT&T Wireless Services, Inc. and any entity that,  
8 prior to October 26, 2004, was affiliated with AT&T Wireless  
9 Services, Inc. (“AWS”) for wireless telephone service during the Class  
10 Period, and who at any time during the Class Period were billed and  
11 paid, but were not refunded in full, for mMode Data Service  
12 (“mMode”) and/or ENH Discount International Dial (“EDID”). The  
13 Class Period is from December 20, 2001 through the Effective Date of  
14 the *Stern I* Settlement Agreement (the “*Stern I* 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 *Stern I* 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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1 e. Persons who have an outstanding balance due on their AT&T  
2 Wireless account that was terminated during the Class Period, of  
3 eight dollars (\$8.00) or more (determined as of the date Notice is  
4 sent to the Settlement Class).

5 4. To be eligible for the mMode benefit of an \$8 check, a member of the  
6 *Stern I* Settlement Class must declare, under penalty of perjury, that he or she did  
7 not understand what mMode meant when it appeared on his or her bill or did not  
8 authorize AWS to bill him or her for mMode. To be eligible for the EDID benefit of  
9 a \$10 check, a member of the *Stern I* Settlement Class must declare, under penalty  
10 of perjury, that he or she did not understand what EDID meant when it appeared on  
11 his or her bill or did not authorize AWS to bill him or her for EDID.

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

- 15 a. the members of the *Stern I* Settlement Class are so numerous that
- 16 joinder of all Settlement Class Members is impracticable;
- 17 b. there are questions of law and fact common to the *Stern I* Settlement
- 18 Class, which predominate over any individual question(s);
- 19 c. the claims of the representative plaintiff are typical of the claims of
- 20 the other members of the *Stern I* Settlement Class;
- 21 d. the representative plaintiff and Class Counsel have fairly and
- 22 adequately represented and protected the interests of the *Stern I*
- 23 Settlement Class; and
- 24 e. a class action is superior to alternative means of resolving the
- 25 claims and disputes at issue in this action.

26 6. The Court hereby appoints: (i) J. Paul Gignac of Arias Ozzello &  
27 Gignac, LLP, and (ii) Peter J. Bezek and Robert Curtis of Foley Bezek Behle &  
28 Curtis LLP as Class Counsel for purposes of the *Stern I* Settlement only. The Court

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1 preliminarily finds that Class Counsel and Heather Stern, the *Stern I* Class  
2 Representative, will fairly and adequately represent and protect the interests of the  
3 absent members of the *Stern I* Settlement Class.

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

19         8. Pending further orders by this Court, all proceedings in this case (other  
20 than proceedings pursuant to this Order) shall be stayed and all members of the  
21 *Stern I* Settlement Class who do not request exclusion from the *Stern I* Settlement  
22 Class in the manner required by this Order shall be enjoined from commencing or  
23 prosecuting any action, suit, proceeding, claim, or cause of action in any jurisdiction  
24 or court against AWS, ATTM or any of the Defendants relating to or arising out of  
25 the subject matter of this action or the claims released under the *Stern I* Settlement  
26 Agreement.

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1 Notice Plan

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

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

- 23 a. Bill Inserts: ATTM shall insert the Short Form Class Notice (in  
24 substantially the same form as Exhibit A to the Supplemental Rice  
25 Declaration) into the paper bills sent to reasonably ascertainable  
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potential members of the UCC Settlement Class<sup>2</sup> who: (i) are current 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:

- o Parade
- o USA Weekend
- o Newsweek

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

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- 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, 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.
- 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.

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

14 Claims Administration

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

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

27 AWS Settlement Claims Administrator  
 28 c/o The Garden City Group, Inc.

1 P.O. Box 9482  
2 Dublin, OH 43017-4582

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

6 14. Any member of the *Stern I* Settlement Class who elects to be excluded  
7 shall not: (i) be entitled to receive any of the benefits of the *Stern I* Settlement; (ii)  
8 be bound by the release of any claims pursuant to the *Stern I* Settlement Agreement;  
9 (iii) be bound by any orders or judgment in *Stern I*; (iv) gain any rights by virtue of  
10 the *Stern I* Settlement Agreement; or (v) be entitled to object to the *Stern I*  
11 Settlement or appear at the Fairness Hearing.

12 15. Members of the *Stern I* Settlement Class who do not submit a Request  
13 for Exclusion in compliance with the deadlines and other specifications set forth in  
14 this Order shall remain part of the *Stern I* Settlement Class and shall be bound by all  
15 proceedings, orders, and judgments of this Court pertaining to the *Stern I* Settlement  
16 Class.

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

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

3 18. Any objection to the *Stern I* Settlement must specify that it relates to  
4 the *Stern I* Settlement and must be filed in *Stern v. AT&T Mobility Corp., et al.*,  
5 Case No. CV 05-8842 CAS (CTx) and served on J. Paul Gignac of Arias Ozzello &  
6 Gignac LLP, for Plaintiffs, and Steven P. Rice of Crowell & Moring, for  
7 Defendants. Additionally, any objection must provide the *Stern I* Settlement Class  
8 member's name and address, contact telephone number, AWS mobile telephone  
9 number, and signature (or the signature of his or her representative). Any such  
10 objection must state the reasons for the objection and, if the *Stern I* Settlement Class  
11 member would like to appear at the Fairness Hearing, provide a statement indicating  
12 his or her intent to appear. Only members of the *Stern I* Settlement Class who have  
13 filed and served valid and timely objections with notices of intention to appear shall  
14 be entitled to be heard at the Fairness Hearing.

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

21 20. Class Counsel shall file any Motion for attorneys' fees, expenses, and  
22 incentive awards for the Class Representatives (the "Motion for Attorneys' Fees")  
23 no later than September 15, 2010 and also shall post the Motion for  
24 Attorneys' Fees on the Settlement website by September 16, 2010. The  
25 hearing on the Motion for Attorneys' Fees shall be heard before this Court on  
26 November 15, 2010, <sup>at 12:00 NOON</sup>.

27 21. The Court may, for good cause, extend any of the deadlines sets forth  
28 in this Order without further notice to the members of the *Stern I* Settlement Class.

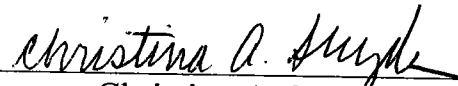
1 The Fairness Hearing may, from time to time and without further notice to the  
2 members of the *Stern I* Settlement Class, be continued by order of the Court.

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

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IT IS SO ORDERED:

DATED: May 17, 2010

  
Christina A. Snyder  
United States District Judge

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