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12 Attorneys for Plaintiffs and Class Counsel

14  
15 **UNITED STATES DISTRICT COURT**  
16 **CENTRAL DISTRICT OF CALIFORNIA**  
17 **WESTERN DIVISION**

18 HEATHER STERN, BROOKE  
19 RANDOLPH, JOHN GIRARD,  
20 MARTIN SCHNALL, NATHAN  
21 RIENSCH, and KELLY LEMONS, on  
22 behalf of themselves and all others  
23 similarly situated,

24 Plaintiffs,

25 vs.

26 NEW CINGULAR WIRELESS  
27 SERVICES, INC. f/k/a AT&T  
28 WIRELESS SERVICES, INC., a  
Delaware corporation; AT&T

Case No.: 8:09-CV-01112-CAS  
(AGRx)

**CLASS ACTION**

**ORDER GRANTING  
APPLICATION FOR:**

**(1) AWARD OF ATTORNEYS'  
FEES AND REIMBURSEMENT  
OF EXPENSES TO CLASS  
COUNSEL; AND**

**(2) INCENTIVE AWARDS FOR**

1 MOBILITY CORPORATION f/k/a  
2 CINGULAR WIRELESS  
3 CORPORATION, a Delaware  
4 corporation; AT&T MOBILITY LLC  
5 f/k/a CINGULAR WIRELESS LLC, a  
6 Delaware limited liability company; and  
7 DOES 1 through 10, inclusive,

8  
9 Defendants.

**CLASS REPRESENTATIVES**

Hearing Date: November 15, 2010  
Hearing Time: Noon (specially set)  
Courtroom: 5 – Spring Street

The Honorable Christina A. Snyder

10 The Court, having considered the papers filed in support of the Application  
11 for: (1) Award of Attorneys’ Fees and Reimbursement of Expenses to Class  
12 Counsel; and (2) Incentive Awards for Class Representatives (“the Fee, Expense  
13 and Incentive Award Application”), and having considered any and all objections  
14 filed by class members to the Fee, Expense and Incentive Award Application,  
15 hereby makes the following findings of fact, reaches the following conclusions of  
16 law, and orders as follows:

**FINDINGS OF FACT**

17 Pursuant to Fed.R.Civ.P. Rules 23(h)(3) and 52(a), the Court makes the  
18 following findings of fact:

19 (1) The parties, by and through their respective counsel, separately  
20 negotiated and agreed upon: (a) an amount of attorneys’ fees (\$350,000.00) to be  
21 paid to the law firms of Arias Ozzello & Gignac LLP and Foley Bezek Behle &  
22 Curtis, LLP for their services as counsel for plaintiff Heather Stern and as Class  
23 Counsel (“Stern/Class Counsel”); and (b) an amount of attorneys’ fees  
24 (\$5,300,000.00) to be paid to the law firms of Breskin Johnson & Townsend  
25 PLLC, Houck Law Firm P.S., and Sundeen Salinas & Pyle for their services as  
26 counsel for plaintiffs Brooke Randolph, John Girard, Martin Schnall, Nathan  
27 Reinsche and Kelly Lemons and as Class Counsel (“Randolph/Class Counsel”).  
28

1 (2) These negotiations took place after counsel had negotiated and agreed  
2 upon the benefits to be made available to the class members under the settlement.

3 (3) The negotiations were arms-length. The negotiations involving  
4 Randolph/Class Counsel took place in a separate mediation session before the Hon.  
5 Howard B. Wiener (Ret.). The negotiations involving Stern/Class Counsel took  
6 place telephonically without the need to involve a mediator.

7 (4) Once an agreement was reached on the amount of attorneys' fees to be  
8 paid to Randolph/Class Counsel, Randolph/Class Counsel and counsel for  
9 ATTM/AWS negotiated and agreed upon a dollar cap amount of \$450,000.00 that  
10 ATTM/AWS would pay to Randolph/Class Counsel in reimbursement for the  
11 litigation-related expenses incurred by Randolph/Class Counsel, as well as  
12 reasonable incentive awards that ATTM/AWS agreed to pay to plaintiffs Brooke  
13 Randolph, John Girard, Martin Schnall, Nathan Reinsche and Kelly Lemons ("the  
14 Randolph Plaintiffs") in the amount of \$7500.00 each.

15 (5) Once an agreement was reached on the amount of attorneys' fees to be  
16 paid to Stern/Class Counsel, Stern/Class Counsel and counsel for ATTM/AWS  
17 negotiated and agreed upon a dollar cap amount of \$10,000.00 that ATTM/AWS  
18 would pay to Stern/Class Counsel in reimbursement for the litigation-related  
19 expenses incurred by Stern/Class Counsel, as well as a reasonable incentive award  
20 that ATTM/AWS agreed to pay to plaintiff Heather Stern ("Plaintiff Stern") in the  
21 amount of \$3500.00.

22 (6) Stern/Class Counsel's lodestar in the amount of \$256,060.00 is  
23 reasonable and justified based on: (a) the market competitive hourly rates charged  
24 by Stern/Class Counsel for the work that was performed; (b) the time and effort  
25 that was expended by Stern/Class Counsel (almost 500 hours); and (c) the duration  
26 of Stern/Class Counsel's involvement in the case (approximately one year).

27 (7) The attorneys' fees requested by Stern/Class Counsel in the amount of  
28 \$350,000.00 represent a multiplier of 1.37 which is reasonable and justified based

1 on: (a) Stern/Class Counsel's involvement in this case; (b) the risks and financial  
2 burdens that Stern/Class Counsel undertook in litigating this case on a fully  
3 contingent basis; and (c) the significant benefits that are being made available to  
4 the class members under the settlement.

5 (8) Randolph/Class Counsel's lodestar in the amount of \$5,613,869.50 is  
6 reasonable and justified based on: (a) the market competitive hourly rates charged  
7 by Randolph/Class Counsel for the work that was performed; (b) the time and  
8 effort that was expended by Randolph/Class Counsel (more than 9700 hours); and  
9 (c) the duration of Randolph/Class Counsel's involvement in the case (more than  
10 eight years).

11 (9) The attorneys' fees requested by Randolph/Class Counsel in the  
12 amount of \$5,300,000.00 are less than their lodestar and, therefore, do not  
13 contemplate the application of a multiplier.

14 (10) When analyzed as a percentage of the overall potential value of the  
15 settlement, the attorneys' fees requested by Stern/Class Counsel and  
16 Randolph/Class Counsel together represent only 2.19% of the total settlement  
17 value.

18 (11) Therefore, whether analyzed on a lodestar/multiplier basis or as a  
19 percentage of the overall potential value of the settlement, the attorneys' fees  
20 requested by Stern/Class Counsel in the amount of \$350,000.00 and the attorneys'  
21 fees requested by Randolph/Class Counsel in the amount of \$5,300,000.00 are fair  
22 and reasonable.

23 (12) The expenses sought by Stern/Class Counsel in the amount of  
24 \$10,000.00 are less than the actual expenses incurred by Stern/Class Counsel in the  
25 amount of \$10,902.33 because Stern/Class Counsel agreed under the terms of the  
26 Settlement Agreement to cap their request for reimbursement of expenses at  
27 \$10,000.00.

28

1 (13) The expenses sought by Randolph/Class Counsel in the amount of  
2 \$450,000.00 are less than the actual expenses incurred by Randolph/Class Counsel  
3 in the amount of \$493,293.99 because Randolph/Class Counsel agreed under the  
4 terms of the Settlement Agreement to cap their request for reimbursement of  
5 expenses at \$450,000.00.

6 (14) The expenses for which Stern/Class Counsel and Randolph/Class  
7 Counsel seek reimbursement appear to be reasonably and necessarily incurred in  
8 connection with the prosecution and resolution of this action.

9 (15) The expenses that are reimbursed will not reduce the benefits  
10 available to the class members in any way.

11 (16) The incentive awards requested by Plaintiff Stern in the amount of  
12 \$3500.00 and by the Randolph Plaintiffs in the amount of \$7500.00 each are fair  
13 and reasonable in light of: (a) the amount of time that Plaintiff Stern and the  
14 Randolph Plaintiffs devoted to fulfilling their duties as class representatives in this  
15 action; (b) the risks that Plaintiff Stern and the Randolph Plaintiffs undertook in  
16 commencing and proceeding with this class action; (c) the duration of the litigation  
17 (for the Randolph Plaintiffs, more than eight years); and (d) the significant benefits  
18 that are being made available to the class members under the settlement.

19 (17) The Long Form Class Notice ("LFCN") that was disseminated to class  
20 members and that is posted on the Internet at [www.awssettlement.com](http://www.awssettlement.com): (a) notifies  
21 class members of the maximum amounts of attorneys' fees, expenses and incentive  
22 awards that will be sought; and (b) notifies class members that the Fee, Expense  
23 and Incentive Award Application will be posted on the website on September 16,  
24 2010.

25 (18) The notice portion of Class Counsel's Fee, Expense and Incentive  
26 Award Application prominently notifies all class members in CAPITALIZED  
27 LETTERS of their right to object to the Fee, Expense and Incentive Award  
28 Application in whole or in part, directs class members to ¶14 of the LFCN posted

1 on the website for instructions on how to object, and informs class members of the  
2 deadline to object.

3 (19) The Fee, Expense and Incentive Award Application was filed on  
4 September 15, 2010 and posted on the website on September 16, 2010, thereby  
5 providing class members with a full two weeks until September 29, 2010 in which  
6 to file any objection to the Fee, Expense and Incentive Award Application.

7 **CONCLUSIONS OF LAW**

8 Pursuant to Fed.R.Civ.P. Rules 23(h)(3) and 52(a), the Court reaches the  
9 following conclusions of law:

10 (1) In a class action, the district court must exercise its inherent authority  
11 to ensure that the amount and mode of payment of attorneys' fees are fair and  
12 appropriate. *Zucker v. Occidental Petroleum Corp.*, 192 F.3d 1323, 1328 (9th Cir.  
13 1999).

14 (2) In calculating attorneys' fees in class actions, the district court has  
15 discretion to use either a percentage or lodestar method in order to calculate the  
16 attorneys' fees to be awarded to counsel. *Hanlon v. Chrysler Corp.*, 150 F.3d  
17 1011, 1029 (9th Cir. 1998).

18 (3) Under the lodestar method, the court can make adjustments to the  
19 lodestar figure based on, *inter alia*, the riskiness of the lawsuit and the quality of  
20 the attorney's work. *Jordan v. Multnomah Co.*, 815 F.2d 1258, 1262 n. 5 (9th Cir.  
21 1986).

22 (4) In determining what qualifies as reasonable attorneys' fees under the  
23 lodestar method, the court may consider the following factors: (1) the time and  
24 labor required; (2) the novelty and difficulty of the questions involved; (3) the skill  
25 required to perform the legal services properly; (4) the preclusion of other  
26 employment by the attorneys due to acceptance of the case; (5) the customary fee;  
27 (6) whether the fee is fixed or contingent; (7) time limitations imposed by the  
28 client or the circumstances; (8) the amount involved and the results obtained; (9)

1 the experience, reputation, and ability of the attorneys; (10) the “undesirability” of  
2 the case; (11) the nature and length of the professional relationship with the client;  
3 and (12) awards in similar cases. *Kerr v. Screen Extras Guild, Inc.*, 526 F.2d 67,  
4 71 (9th Cir. 1975).

5 (5) The figure of 25% has been established as the “benchmark” in the  
6 Ninth Circuit for attorneys’ fees that are awarded under the percentage-of-the-fund  
7 method. *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047-1048 (9th Cir. 2002).

8 (6) The district courts have applied a wide range of multipliers –  
9 generally ranging from 2 to 4 – in making fee award determinations. *Id.* at  
10 Appendix.

11 (7) In a certified class action, the court may award reasonable attorneys’  
12 fees, nontaxable costs and expenses that are authorized by law or by the parties’  
13 agreement. Fed.R.Civ.P. 23(h); *Vincent v. Hughes Air West, Inc.*, 557 F.2d 759,  
14 769 (9th Cir. 1977).

15 (8) The trial court has discretion to grant incentive awards to class  
16 representatives. *In re Mego Fin'l Corp. Sec. Litig. v. Nadler*, 213 F.3d 454, 463  
17 (9th Cir. 2000).

18 (9) The criteria that courts should consider when determining whether to  
19 grant an incentive award and the amount of the award include: (a) the risk to the  
20 class representative in commencing a class action, both financial and otherwise; (b)  
21 the notoriety and personal difficulties encountered by the class representative; (c)  
22 the amount of time and effort spent by the class representative; (d) the duration of  
23 the litigation; and (e) the personal benefit, or lack thereof, enjoyed by the class  
24 representative as a result of the litigation. *Van Vranken v. Atlantic Richfield Co.*,  
25 901 F.Supp. 294, 299 (N.D.Cal.1995); *Staton v. Boeing*, 327 F.3d 938, 977 (9th  
26 Cir. 2003).

27 (10) It is not uncommon for a court to award each class representative  
28 several thousand dollars as an incentive award. *See, e.g., In re Mego Fin. Corp.*

1 *Sec. Litig.*, 213 F.3d at 463 (approving incentive awards of \$5000 to the two class  
2 representatives); *Van Vranken*, 901 F. Supp. at 300 (approving incentive award to  
3 single class representative in the amount of \$50,000).

4 (11) It is imperative under Rule 23(h) that class members have an adequate  
5 opportunity to oppose Class Counsel's Fee, Expense and Incentive Award  
6 Application. *In re: Mercury Interactive Corp. Securities*, \_\_F.3d \_\_ (9<sup>th</sup> Cir. 2010).

7 (12) Providing class members with an adequate opportunity to oppose  
8 Class Counsel's Fee, Expense and Incentive Award Application requires that, at a  
9 minimum, the deadline for filing objections to Class Counsel's Fee, Expense and  
10 Incentive Award Application not predate the filing of Class Counsel's Fee,  
11 Expense and Incentive Award Application. *Id.*

12 **ORDER**

13 Pursuant to Fed.R.Civ.P. Rule 23(h), the Court orders as follows:

14 (1) Attorneys' fees in the total amount of \$350,000.00 are awarded to  
15 Stern/Class Counsel for their services in connection with the litigation and  
16 resolution of the claims asserted in this action.

17 (2) Attorneys' fees in the total amount of \$5,300,000.00 are awarded to  
18 Randolph/Class Counsel for their services in connection with the litigation and  
19 resolution of the claims asserted in this action.

20 (3) Stern/Class Counsel are to be reimbursed for their reasonable expenses  
21 and non-taxable costs incurred in connection with the litigation and resolution of  
22 the claims asserted in this action in the total amount of \$10,000.00.

23 (4) Randolph/Class Counsel are to be reimbursed for their reasonable  
24 expenses and non-taxable costs incurred in connection with the litigation and  
25 resolution of the claims asserted in this action in the total amount of \$450,000.00.

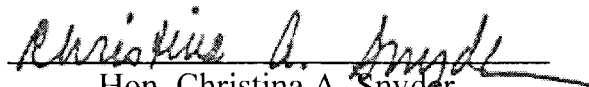
26 (5) Plaintiff Stern is granted an incentive award in the amount of \$3,500.00.

27 (6) The Randolph Plaintiffs are granted incentive awards in the amount of  
28 \$7,500.00 each.

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IT IS SO ORDERED.

Dated: November 22, 2010

  
Hon. Christina A. Snyder