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3 Park Plaza, 20th Floor
Irvine, CA 92614-8505
(949) 263-8400

1 Steven P. Rice (State Bar No. 094321)
srice@crowell.com
2 CROWELL & MORING LLP
3 3 Park Plaza, 20th Floor
Irvine, California 92614-8505
4 Telephone: (949) 263-8400
Facsimile: (949) 263-8414

5 Kathleen Balderrama (State Bar No. 222022)
6 kbalderrama@crowell.com
7 Emily T. Kuwahara (State Bar No. 252411)
ekuwahara@crowell.com
8 CROWELL & MORING LLP
515 South Flower Street, 40th Floor
9 Los Angeles, California 90071-2258
10 Telephone: (213) 622-4750
Facsimile: (213) 622-2690

11 Attorneys for Defendants

JS-6

12 **UNITED STATES DISTRICT COURT**
13 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**
14

15 HEATHER STERN, BROOKE
16 RANDOLPH, JOHN GIRARD,
MARTIN SCHNALL, NATHAN
17 RIENSCH, and KELLY LEMONS
on behalf of themselves and all others
similarly situated,

18 Plaintiffs,

19 v.

20 NEW CINGULAR WIRELESS
SERVICES, INC. f/k/a AT&T
21 WIRELESS SERVICES, INC., et al.,
22 Defendants.

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

CLASS ACTION

**ORDER GRANTING FINAL
APPROVAL TO THE UCC
SETTLEMENT AND ENTERING
FINAL JUDGMENT PURSUANT TO
FED.R.CIV.P. 23(c)(3)(B) and 54(b)**

Hearing Date: November 15, 2010
Time: Noon
Courtroom: 5

Hon. Christina A. Snyder, presiding

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28 Case No. SACV 09-1112

[PROPOSED] ORDER GRANTING FINAL APPROVAL TO THE UCC SETTLEMENT
AND ENTERING FINAL JUDGMENT PURSUANT TO FED.R.CIV.P. 23(c)(3)(B) AND 54(b)

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1 On May 17, 2010, this Court granted preliminary approval to the Settlement
2 Agreement in *Stern, et al. v. New Cingular Wireless Services, Inc. f/k/a AT&T*
3 *Wireless Services, Inc., et al.*, Case No. SACV 09-1112 CAS (AGRx) (“*Stern II*”)
4 (Dkt. No. 30) (“Preliminary Approval Order”). The Court certified the UCC
5 Settlement Class (as defined in the UCC Settlement Agreement) and approved a
6 unified notice and claims administration program for the Settlements of certain
7 Consolidated Cases.¹ The Court directed the Parties to provide Notice of the
8 Settlements of the Consolidated Cases beginning no later than July 1, 2010 and
9 concluding no later than August 15, 2010. The Court further directed that any
10 objections to the UCC Settlement be filed no later than September 29, 2010.

11 On October 15, 2010, Plaintiffs filed their Motion for Final Approval of the
12 Settlements of the Consolidated Cases and supporting briefing and declarations.
13 (Dkt. No. 50.) Also on October 15, 2010, Defendants joined in Plaintiffs’ Motion
14 for Final Approval and filed supporting briefing and declarations addressing the
15 provision of notice, among other things. (Dkt. Nos. 51-57.)

16 After considering the Motion for Final Approval, including the supporting
17 papers filed by Plaintiffs and Defendants, the UCC Settlement Agreement and
18 Release (the “UCC Settlement Agreement”),² the objections submitted to the UCC
19 Settlement, the arguments of all counsel who wished to be heard (including counsel
20 for any objectors) and any class members who wished to be heard, and all other
21 materials that the Court determined to be relevant to this matter, and good cause
22 appearing, the Court **FINDS** and **ORDERS** as follows:

23

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

28 ² To the extent not otherwise defined herein, all capitalized terms shall have the
meanings attributed to them in the UCC Settlement Agreement.

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Findings of Fact and Law

1. The Court finds that it has jurisdiction over the subject matter of this action, over all claims raised therein and over all Parties thereto, including all members of the UCC Settlement Class and the objectors identified below with respect to their objections to the UCC Settlement.

Settlement Class Certification

2. The “UCC Settlement Class” is defined as:
All customers of AT&T Wireless Services, Inc. and any entity that, prior to October 26, 2004, was affiliated with AT&T Wireless Services, Inc., including but not limited to AT&T Wireless Services of California, Inc. (collectively, “AWS”), who reside in the United States and its territories and who paid, and were not previously refunded or credited, universal connectivity charges.

3. The Class Period for the UCC Settlement Class is from March 1, 1999 through the Effective Date of the UCC Settlement Agreement (the “UCC Class Period”). The “Effective Date” is the first date when all of the following events shall have occurred: (a) the entry of this Final Approval Order by the Court; and (b) the statutory deadline for filing an appeal has expired, or if an appeal is taken, the date when the appeal has been decided or resolved in such a way as to leave the Final Approval Order in effect and the time for any further appeal or review has expired.

4. Excluded from the UCC Settlement Class are:
- a. Current and former employees, officers, directors, agents, or legal representatives of AWS or AT&T Mobility (“ATTM”) and their affiliated entities;
 - b. Government agencies;
 - c. Persons who were subscribers to any pre-paid rate plan;

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- 1 d. Persons with a Corporate B2B account;
- 2 e. Any person who had an outstanding balance due on his or her
- 3 account with AWS at the time that his or her AWS service was
- 4 terminated, unless such outstanding balance and all associated fees
- 5 have been paid in full; and
- 6 f. Any person who timely submitted a Request for Exclusion to the
- 7 Settlement Administrator, the Garden City Group (“GCG”), in
- 8 accordance with the Notice provided pursuant to the Preliminary
- 9 Approval Order.

10 5. For purposes of the UCC Settlement only, the Court finds that the

11 requirements of Federal Rule of Civil Procedure 23 (“Rule 23”) are satisfied, and

12 certifies the UCC Settlement Class under Rule 23(a) and (b)(3). The Court makes

13 these findings for the reasons articulated in Plaintiffs’ and Defendants’ briefing

14 supporting the Motions for Preliminary Approval and Final Approval of the UCC

15 Settlement. Specifically, the Court finds as follows:

16 a. the UCC Settlement Class includes as many as 36 million members³

17 and, consequently, the UCC Settlement Class members are so numerous that joinder

18 of all UCC Settlement Class members is impracticable;

19 b. there are questions of law and fact common to the UCC Settlement

20 Class, which predominate over any individual question(s), including, but not limited

21 to:

- 22 i. whether Defendants’ imposition of the UCC charge was an
- 23 unjust and unreasonable charge and practice in connection with
- 24 telecommunication services, and

27 ³ See Declaration of Christopher Huffstutler ¶¶ 14-17 (*Stern I* Dkt. No. 275).

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1 ii. whether Defendants made full and adequate disclosures to their
2 customers of the UCC charges;

3 c. the claims of the UCC Class Representatives⁴ are typical of the claims
4 of the other members of the UCC Settlement Class because the claims of both the
5 UCC Representative Plaintiffs and all class members relate to the imposition of the
6 UCC charge;

7 d. the UCC Class Representatives and Class Counsel⁵ have fairly and
8 adequately represented and protected the interests of the UCC Settlement Class
9 because there is no conflict between the UCC Class Representatives' claims and the
10 claims of the individual Settlement Class Members and because Class Counsel are
11 well qualified and have vigorously prosecuted the settled litigation; and

12 e. this class action settlement is superior to alternative means of resolving
13 the claims and disputes at issue in this action in the context of this settlement.

14 Exclusions from the UCC Settlement Class

15 6. The Court finds that 67 individuals timely and properly requested
16 exclusion from the Settlements of the Consolidated Cases. Declaration of Jennifer
17 Keough ("Keough Dec.") ¶ 14 (Dkt. No. 55). Each of these 67 individuals is
18 excluded from the UCC Settlement Class.⁶ All members of the UCC Settlement
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22 ⁴ The "UCC Class Representatives" are Heather Stern, Martin Schnall, Nathan
23 Riensche, Kelly Lemons, John Girard, and Brooke Randolph.

24 ⁵ The Court appointed the law firms of Arias Ozzello & Gignac LLP, Foley Bezek
25 Behle & Curtis LLP, Breskin Johnson & Townsend PLLC, the Houck Law Firm
26 P.S., and Sundeen, Salinas & Pyle as "Class Counsel."

27 ⁶ Kwaku Kushindana requested exclusion but also filed an objection. The Court
28 finds that Mr. Kushindana has excluded himself from the UCC Settlement and
therefore cannot object to the settlement. However, the Court has nevertheless
considered his objection below.

1 Class, aside from these 67 individuals, will be bound by this Final Approval Order
2 and Judgment.⁷

3 Notice Plan

4 7. The papers supporting the Final Approval Motion, including, but not
5 limited to, the Declarations of Steven P. Rice, Jeanne C. Finegan, Christopher
6 Huffstutler, John T. Throckmorton, Pamela Arnold, Jessica Adams, and Jennifer
7 Keough filed on October 15, 2010, describe the Parties' provision of Notice of the
8 Settlements of the Consolidated Cases. (Dkt. Nos. 53-56.) Notice was directed to
9 all members of the UCC Settlement Class defined in paragraph 2, above. No
10 objections to the method or contents of the Notice have been received. Based on the
11 above mentioned declarations, *inter alia*, the Court finds that the Parties have fully
12 and adequately effectuated the Notice Plan, as required by the Preliminary Approval
13 Order, and, in fact, have achieved better results than anticipated or required by the
14 Preliminary Approval Order.

15 8. Based on the above mentioned declarations, *inter alia*, the Court further
16 finds that the Notice provided:

- 17 a. constitutes the best notice practicable under the circumstances;
18 b. constitutes notice that was concise, clear, written in plain, easily
19 understood language, and was reasonably calculated, under the circumstances, to
20 apprise the UCC Settlement Class members of the pendency of the action, the
21 claims, issues, and defenses of the UCC Settlement Class, the definition of the UCC
22 Settlement Class as certified, their right to exclude themselves from, or object to, the
23 proposed settlement, their right to appear at the Fairness Hearing, through counsel,
24 if desired, and the binding effect of a judgment on UCC Settlement Class members;

25 _____
26 ⁷ The 67 class members determined by Settlement Administrator to have timely and
27 properly requested exclusion from the UCC Settlement Class are identified in the
28 list attached hereto as Exhibit "1".

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1 c. constitutes due, adequate, and sufficient notice to the all members of
2 the UCC Settlement Class; and

3 d. meets all applicable requirements of the Federal Rules of Civil
4 Procedure, the United States Code, and the United States Constitution (including the
5 Due Process clause), and fully complies with any other applicable law.

6 Benefits, Attorneys' Fees and Expenses, and Incentive Payments

7 9. As stated in the Preliminary Approval Order, UCC Settlement Class
8 members who did not submit a Request for Exclusion may submit claims to GCG
9 through February 13, 2011 ("Claim Deadline").

10 10. The UCC Settlement benefits include the following:

11 a. ATTM will provide a check in the amount of \$7 ("Member Payment")
12 for each line of service for which a benefit is requested to each UCC Settlement
13 Class member who submits a Claim Form⁸ on or before the Claim Deadline that is
14 approved by GCG as provided herein ("Approved Claim"); and

15 b. Within 30 days after the entry of this Order, ATTM will notify its
16 company-owned retail stores in the United States and its customer care
17 representatives (in call centers handling consumer calls and inquiries) of the terms
18 of the UCC Settlement Agreement and instruct them to respond to customer
19 inquiries accordingly until the deadline for submitting a claim under the Settlement
20 has passed.

21 11. As stated in the UCC Settlement Agreement and the Preliminary
22 Approval Order, to be eligible for the Member Benefit, a member of the UCC
23 Settlement Class must, by the Claim Deadline, submit a Claim Form to GCG in

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26 ⁸ "Claim Form" means the form used by a Class Member to submit a claim, which
27 was approved by the Court in the Preliminary Approval Order.

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1 which he or she provides the information required by the Claim Form, including but
2 not limited to a declaration, under penalty of perjury, that:

3 a. The UCC Settlement Class member was not aware at the time of
4 subscribing that the UCC would be charged;

5 b. It would have made a difference to the UCC Settlement Class member
6 had he/she known about the UCC at the time of subscribing; and

7 c. If the UCC Settlement Class member is a former AWS customer, the
8 class member's AWS account was paid in full prior to submission of the Claim
9 Form.

10 12. GCG shall be responsible for determining whether a claimant has
11 submitted a Claim Form that is an Approved Claim. Defendants may challenge a
12 submitted Claim Form only on the grounds that the claimant:

13 a. was never an AWS subscriber; or

14 b. if the UCC Settlement Class member is not a current ATTM customer,
15 he or she had an account that was not paid in full prior to submission of the Claim
16 Form; or

17 c. the person who submitted the Claim Form is otherwise not eligible to
18 submit it under the terms of the UCC Settlement Agreement or this Court's Orders.

19 13. ATTM shall issue the settlement benefits, with the assistance of GCG,
20 as soon as practical after the Effective Date.

21 14. Plaintiffs and their counsel have moved this Court for an Order
22 awarding attorneys' fees, expenses, and incentive awards, by motion filed
23 September 15, 2010. The Court has awarded attorneys' fees, expenses, and
24 incentive awards in a separate order, dated November 22, 2010 ("Fee Order").

25 15. As stated in the UCC Settlement Agreement, within five (5) business
26 days of the entry of this Order, ATTM shall deposit the amount of the attorneys'
27 fees and expenses awarded to Class Counsel and the incentive awards to the

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1 Representative Plaintiffs, in the amounts provided in the Fee Order, in an interest
2 bearing account controlled by ATTM for the benefit of Class Counsel and the
3 Representative Plaintiffs at one or more financial institutions selected by Class
4 Counsel and approved by ATTM. Within three (3) business days after the Effective
5 Date, ATTM shall execute such documents as are necessary to release the attorneys'
6 fees and expenses and any incentive awards so deposited, together with any and all
7 interest accrued, net of any expenses charged by the financial institution, to Class
8 Counsel, who then shall be responsible to promptly pay Representative Plaintiffs
9 their approved incentive payments, with their pro rata share of any interest.

10 16. The Parties agreed in the UCC Settlement Agreement not to file or
11 cooperate in the filing of any appeals relating to this Order or any terms of the UCC
12 Settlement Agreement, other than: (a) any appeal relating to the Court's approval of
13 any objection to this Agreement, or (b) any appeal by Class Counsel of the amount
14 of their fee award, subject to the limitations as to the maximum amount of such
15 award set forth in the UCC Settlement Agreement. The Court finds this agreement
16 to be fair and reasonable and to constitute a valid and enforceable waiver of the right
17 to appeal as stated herein.

18 17. The Parties also agreed in the UCC Settlement Agreement that, as soon
19 as practicable after the Effective Date, the Releasing Parties shall dismiss with
20 prejudice the lawsuits in *Randolph v. AT&T Wireless Services, Inc.*, Case No.
21 RG05193855 (Alameda County, CA, Superior Court) ("*Randolph*") and *Schnall v.*
22 *AT&T Wireless Services, Inc.*, Case No. 02-2-0576-4 (King County, WA, Superior
23 Court) ("*Schnall*") in their entirety as to all claims and all parties, or if required by
24 the court or applicable law, the Releasing Parties shall cause the entry of judgment
25 in a form to be agreed upon consistent with the UCC Settlement Agreement. The
26 parties in *Randolph* and *Schnall* shall have no right to recover any attorneys' fees or
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1 costs in those cases except to the extent such fees and costs are included in the Fee
2 Order. The Court finds this agreement to be fair and reasonable.

3 Approval of the UCC Settlement

4 18. In determining whether to approve the UCC Settlement Agreement, the
5 Court has considered “the strength of plaintiffs’ case; the risk, expense, complexity,
6 and likely duration of further litigation; the risk of maintaining class action status
7 throughout the trial; the amount offered in settlement; the extent of discovery
8 completed, and the stage of the proceeding; the experience and views of counsel; the
9 presence of a governmental participant; and the reaction of the class members to the
10 proposed settlement.” *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1291 (9th
11 Cir. 1992). *See also In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 459 (9th Cir.
12 2000). After consideration of each of these factors as applicable, the Court finds
13 that the UCC Settlement is fair, reasonable and adequate and is in the best interests
14 of the UCC Settlement Class.

15 19. The Court makes these findings for the reasons articulated in Plaintiffs’
16 and Defendants’ briefing supporting the Motions for Preliminary Approval and
17 Final Approval of the UCC Settlement and for the reasons identified by the parties
18 and the Court at the Final Approval Hearing on November 15, 2010. Specifically,
19 the Court finds as follows:

20 a. Plaintiffs in *Stern II*, as well as the plaintiffs in the two UCC lawsuits
21 that will be resolved as part of this Settlement, *Schnall* and *Randolph*, face
22 significant litigation risk and expense in light of recent decisions by the courts in
23 both *Schnall* and *Randolph* and thus face the possibility of little or no recovery. In
24 contrast, this Settlement provides between 33 and 99 percent of the class members’
25 damages, as estimated by Class Counsel and Defendants, respectively. The Court
26 finds that this monetary benefit is fair and reasonable. *See In re Mego Fin. Corp.*
27

1 *Sec. Litig.*, 213 F.3d at 459 (approving settlement providing approximately 16% of
2 plaintiffs' potential recovery).

3 b. The claims of the UCC Settlement Class members have been the
4 subject of extensive litigation since 2002. The parties in *Schnall* and *Randolph* have
5 engaged in extensive discovery, allowing counsel to make informed decisions about
6 settlement. All counsel involved in the three cases are experienced in class actions
7 and knowledgeable about the claims. Accordingly, the Court finds that counsel's
8 view of the settlement as fair, reasonable and adequate warrants great weight. *See*
9 *In re Wash. Public Power Supply Sys. Sec. Litig.*, 720 F. Supp. 1379, 1392 (D. Ariz.
10 1989).

11 c. The neutral mediator, the Honorable Howard B. Wiener, Justice of the
12 California Court of Appeal, Ret., has opined that the terms of the UCC Settlement
13 are fair and reasonable to the UCC Settlement Class members. The Court finds that
14 the UCC Settlement Agreement was entered into at arm's length by experienced
15 counsel and only after extensive arm's-length negotiations. *See, e.g.*, Declaration of
16 Hon. Howard Wiener ¶ 21, filed April 21, 2010 (*Stern I* Dkt. No. 274); Declaration
17 of J. Paul Gignac ¶ 8, filed April 14, 2010 (*Stern I* Dkt. No. 269-5); Declaration of
18 David E. Breskin ¶¶ 13-15, filed April 14, 2010 (*Stern I* Dkt. No. 269-7);
19 Declaration of William Houck, ¶¶ 10-12, filed April 14, 2010 (*Stern I* Dkt. No. 269-
20 8); Declaration of Steven P. Rice ¶ 9, filed April 21, 2010 (*Stern I* Dkt. No. 276).⁹

21 d. Just 67 individuals have opted out of the Settlements of the
22 Consolidated Cases, and only four class members have filed objections to the UCC
23 Settlement. The Court has considered these objections and overrules them for the
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26 ⁹ Pursuant to Order, dated April 13, 2010, pleadings related to the settlement of the
27 consolidated actions were ordered to be filed in *Stern I*.

1 reasons provided below. The Court finds that the reaction of the UCC Settlement
2 Class members to the UCC Settlement weighs in favor of approving the settlement.

3 Objections to the UCC Settlement

4 20. The Court has received objections to the UCC Settlement from nine
5 individuals. The Court finds that objectors Kwaku Kushindana, Sally Coffin,
6 Robert Lynch, Barbara Cochran, and Clark Richard Brown are not members of the
7 UCC Settlement Class and, thus, lack standing to object to the UCC Settlement.
8 The Court overrules the objections to the UCC Settlement filed by James Coffin,
9 Marc Gambello, Gene Hopkins, and Karin Lynch.

10 a. Kwaku Kushindana: Mr. Kushindana timely filed a Request for
11 Exclusion from the UCC Settlement Class and, consequently, is not a member of the
12 UCC Settlement Class. Keough Dec. ¶ 14 (Dkt. No. 55). The Court finds that Mr.
13 Kushindana lacks standing to object to the UCC Settlement pursuant to Federal Rule
14 of Civil Procedure 23(e)(5). In the alternative, the Court overrules Mr.
15 Kushindana's objection on the merits, finding that the negotiation process was
16 conducted at arm's-length and that the terms of the UCC Settlement are
17 fundamentally fair, adequate, and reasonable for the reasons set forth above.

18 b. Sally Coffin: The Court finds that Ms. Coffin is not a member of the
19 UCC Settlement Class because she was not an AWS subscriber during the UCC
20 Class Period. See Declaration of Caroline B. Mahone-Gonzalez ("Gonzalez Dec.")
21 ¶ 4, filed October 15, 2010 (Dkt. No. 52). Consequently, the Court finds that Ms.
22 Coffin lacks standing to object to the UCC Settlement pursuant to Federal Rule of
23 Civil Procedure 23(e)(5).

24 c. Robert Lynch: Mr. Lynch withdrew his objection to the UCC
25 Settlement. (*Stern I* Dkt. No. 352). The Court finds that Mr. Lynch is not a member
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1 of the UCC Settlement Class because he was not an AWS subscriber during the
2 UCC Class Period¹⁰ and grants the withdrawal of his objection. Consequently, the
3 Court finds that Mr. Lynch lacks standing to object to the UCC Settlement pursuant
4 to Federal Rule of Civil Procedure 23(e)(5).

5 d. Barbara Cochran: Ms. Cochran filed a Stipulation withdrawing her
6 objection to the UCC Settlement, which the Court granted. (Dkt. No. 73).

7 e. Clark Richard Brown: Mr. Brown filed a Stipulation withdrawing his
8 objection to the UCC Settlement, which the Court granted. (Dkt. No. 73).

9 f. James Coffin: The Court overrules Mr. Coffin's objections to the UCC
10 Settlement for the reasons articulated in Plaintiffs' and Defendants' briefing
11 supporting the Motion for Final Approval of the UCC Settlement and for the reasons
12 identified by the parties and the Court at the Final Approval Hearing on November
13 15, 2010. Specifically, the Court determines as follows:

14 i. The use of a claim form, signed under penalty of perjury, is
15 necessary and wholly appropriate in the UCC Settlement. Courts
16 routinely require claimants to submit proof of their damages or
17 fill out claim forms in order to obtain their benefits. *See, e.g.,*
18 *DeHoyos v. Allstate Corp.*, 240 F.R.D. 269, 313-15 (W.D. Tex.
19 2007); *In re Lawnmower Engine Horsepower Mktg. & Sales*
20 *Practices Litig.*, ___ F. Supp. 2d ___, 2010 WL 3310264, at *10
21 (E.D. Wis. Aug. 16 2010). In this case, no proof of damages
22 other than filling out a claim form under penalty of perjury is
23 required. The Court finds that the Claim Form and claims
24 process required by the UCC Settlement is fair and reasonable
25 and overrules Mr. Coffin's objection.

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27 ¹⁰ See Gonzalez Dec. ¶ 9.

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1 g. Marc Gambello: The Court overrules Mr. Gambello’s objections to
2 the UCC Settlement for the reasons articulated in Plaintiffs’ and Defendants’
3 briefing supporting the Motion for Final Approval of the UCC Settlement and for
4 the reasons identified by the parties and the Court at the Final Approval Hearing on
5 November 15, 2010. Specifically, the Court rules as follows:

6 i. The release contemplated by the UCC Settlement Agreement is
7 appropriately limited to the “facts, acts, events, transactions,
8 [and] occurrences ... with respect to the UCC and/or the UCC
9 Claims. . .” at issue in *Schnall, Randolph, and Stern II*.
10 Declaration of Steven P. Rice in support of Motion for
11 Preliminary Approval, dated April 21, 2010 (*Stern I* Dkt. No.
12 276), Ex. A at 9 (UCC Settlement Agreement ¶ 17). *See Class*
13 *Plaintiffs*, 955 F.2d at 1276. Mr. Gambello’s objection to the
14 scope of the release of claims in the UCC Settlement Agreement
15 is overruled.

16 ii. Mr. Gambello’s objection to the Claim Form and claims process
17 is overruled for the same reasons that the Court overrules Mr.
18 Coffin’s similar objection.

19 iii. Each of Mr. Gambello’s objections to the amount of benefits
20 provided under the UCC Settlement is overruled. The Court
21 finds that the UCC Settlement provides fair and adequate
22 benefits to the members of the UCC Settlement Class.

23 iv. Mr. Gambello’s objection to the amount of attorneys’ fees
24 requested by Class Counsel is overruled. For the reasons stated
25 in this Court’s Order dated _____, the amount of
26 attorneys’ fees awarded is fair, reasonable and adequate. In
27 addition, Mr. Gambello’s objection provides no benefit to the

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1 UCC Settlement Class because any reduction in the amount of
2 attorneys' fees would not increase the amount of benefits
3 available to the UCC Settlement Class.

4 h. Gene Hopkins: The Court overrules Mr. Hopkins' objections to the
5 UCC Settlement for the reasons articulated in Plaintiffs' and Defendants' briefing
6 supporting the Motion for Final Approval of the UCC Settlement and for the reasons
7 identified by the parties and the Court at the Final Approval Hearing on November
8 15, 2010. Specifically, the Court rules as follows:

9 i. Mr. Hopkins' objection to the amount of attorneys' fees,
10 expenses, and incentive awards provided in the UCC Settlement
11 Agreement is overruled. For the reasons stated in this Court's
12 Order dated _____, the amount of attorneys' fees,
13 expenses, and incentive awards awarded is fair, reasonable and
14 adequate. In addition, Mr. Hopkins' objection provides no
15 benefit to the UCC Settlement Class because any reduction in the
16 amount of attorneys' fees, expenses, and incentive awards would
17 not increase the amount of benefits available to the UCC
18 Settlement Class.

19 i. Karin Lynch: The Court overrules Ms. Lynch's objections to the UCC
20 Settlement for the reasons articulated in Plaintiffs' and Defendants' briefing
21 supporting the Motion for Final Approval of the UCC Settlement and for the reasons
22 identified by the parties and the Court at the Final Approval Hearing on November
23 15, 2010. Specifically, the Court rules as follows:

24 i. The Court finds that providing a uniform benefit of \$7 per
25 claimant who files an Approved Claim is appropriate and that the
26 \$7 amount is fair, adequate, and reasonable, particularly in light
27 of the possibility that the plaintiffs may recover limited or no

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damages if the case proceeds to trial. Consequently, the Court overrules Ms. Lynch's objections to the benefits provided by the UCC Settlement Agreement.

- ii. The Court finds that the parties have provided a reasonable basis for the amount of benefits provided by the UCC Settlement Agreement. See Declaration of Hunter Pyle, dated April 14, 2010 (*Stern I* Dkt. No. 269-5), ¶¶ 8-10, Plaintiffs' Motion for Preliminary Approval at 38, and Plaintiffs' Motion for Final Approval at 46. Consequently, the Court overrules Ms. Lynch's objection regarding the basis for the amount of benefits provided by the UCC Settlement Agreement.
- iii. The Court overrules Ms. Lynch's objection to the scope of the releases for the same reasons that it overrules Mr. Gambello's similar objection to the scope of the releases.
- iv. Ms. Lynch's objection to the amount of attorneys' fees and incentive awards provided in the UCC Settlement Agreement is overruled. For the reasons stated in this Court's Order dated _____, the amount of attorneys' fees and incentive awards awarded is fair, reasonable and adequate. In addition, Ms. Lynch's objection provides no benefit to the UCC Settlement Class because any reduction in the amount of attorneys' fees and incentive awards would not increase the amount of benefits available to the UCC Settlement Class.

ORDER

Based on the findings set forth above, the Court makes the following Orders:

- A. The Court certifies the UCC Settlement Class, as defined above.

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1 B. The Court holds that objectors Kwaku Kushindana, Sally Coffin, and
2 Robert Lynch are not members of the UCC Settlement Class and, thus, lack standing
3 to object to the UCC Settlement.

4 C. The Court overrules the objections to the UCC Settlement filed by
5 James Coffin, Marc Gambello, Gene Hopkins, and Karin Lynch.

6 D. The Court grants Plaintiffs' Motion for Final Approval of the UCC
7 Settlement. The Court further orders as follows:

8 1) The terms of the UCC Settlement Agreement and this Final
9 Approval Order and Judgment are binding on all of the Releasing
10 Parties.¹¹

11 2) The Court deems the UCC Settlement Agreement and every term
12 and provision thereof incorporated herein as if explicitly set forth
13 and with the full force of an order of this Court. The Parties shall
14 effectuate the UCC Settlement in accordance with the terms of the
15 UCC Settlement Agreement and this Order. In the event of a
16 conflict between the terms of the UCC Settlement Agreement and
17 this Order, the terms of this Order shall take precedence.

18 3) The Court orders that, to the extent necessary in connection with
19 this Class Action Settlement, including the provision of notice,
20 administration of claims, or payment of benefits under the UCC
21 Settlement Agreement, Defendant may provide GCG with
22 documents, records, and electronic files relating to Class Members'
23

24 ¹¹ "Releasing Parties" are "all Class Members who do not exclude themselves from
25 the Settlement Class" and "their respective current and former officers, directors,
26 employees, attorneys, heirs, executors, administrators, agents, legal representatives
27 professional corporations, partnerships, assigns and successors, but only to the
extent such claims are derived by contract or operation of law from the claims of
UCC Class Members." UCC Settlement Agreement ¶ 54.

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1 accounts, notwithstanding any protection from disclosure which
2 might otherwise apply to such documents, records, or electronic
3 files under California Public Utilities Code § 2891, any other
4 federal, state, and territorial laws of similar effect, and any related
5 tariff provisions.

6 4) Upon the Effective Date, the Released Parties¹² shall be released
7 and forever discharged by the Releasing Parties from the Released
8 Claims.¹³

9 5) The Releasing Parties are permanently barred and enjoined from:
10 a. filing, commencing, prosecuting, intervening in, participating
11 in or receiving any benefits from any lawsuit, arbitration,
12

13 ¹² “Released Parties” is defined as “AT&T, AWS, Cingular Wireless, LLC, AT&T
14 Wireless Services of California, Inc., New Cingular Wireless Services, Inc. f/k/a/
15 AT&T Wireless Services, Inc., AT&T Mobility Corporation f/k/a Cingular Wireless
16 Corporation, and AT&T Mobility LLC f/k/a/ Cingular Wireless LLC, and each of
17 their present and former parents, subsidiaries, divisions and affiliates and each of
18 their respective current or former officers, directors, employees, agents, insurers and
19 attorneys and the predecessors, heirs, executors, administrators, legal
20 representatives, successors and assigns of each of the foregoing.” UCC Settlement
21 Agreement ¶16.

22 ¹³ “Released Claims” is defined as “all causes of action, judgments, liens,
23 indebtedness, costs, damages, obligations, attorneys’ fees, losses, claims, liabilities
24 and demands of whatever kind, source or character whether arising under any
25 federal or state law, which includes, but is not limited to, the Federal
26 Communications Act, 47 U.S.C. § 201 *et seq.*, the California Unfair Competition
27 Law, Business and Professions Code § 17200, *et seq.*, the California Consumer
Legal Remedies Act, Civil Code §§ 1750, *et seq.*, the Washington Consumer
Protection Act, 19 RCW § 19.86.010, *et seq.*, the Racketeer Influenced and Corrupt
Organizations Act, and antitrust, consumer and other statutory and common law
claims, whether alleging or based on intentional or non-intentional conduct, arising
on or before the Effective Date, which are, were or could have been asserted against
any of the Released Parties by reason of, arising out of, or in any way related to the
UCC and/or the UCC Claims, and any of the facts, acts, events, transactions,
charges, occurrences, course of conduct, business practices, representations,
omissions, circumstances or other matters with respect to the UCC and/or the UCC
Claims, whether any such claim was or could have been asserted by any Releasing
Party on its own behalf or on behalf of other persons. The ‘Released Claims’
expressly do not include the ‘Excluded Claims’ as defined in [UCC Settlement]
paragraph 13.” UCC Settlement Agreement ¶ 17.

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administrative or regulatory proceeding or order in any jurisdiction based on any causes of action, claims, judgments, liens, indebtedness, costs, damages, obligations, attorneys' fees, losses, liabilities, and demands of whatever kind, source or character, whether arising under state or federal law, whether intentional or non-intentional, that are, were, or could have been asserted against any Released Party regarding the Released Claims; and

b. filing, commencing, prosecuting, intervening in, participating in or receiving any benefits from any lawsuit, arbitration, administrative or regulatory proceeding or order in any jurisdiction based on an allegation that any action of any of the Released Parties, that is in compliance with the UCC Settlement Agreement, violates any legal right of any Releasing Party regarding the Released Claims.

6) The Court orders that the terms of the UCC Settlement Agreement and this Final Approval Order and Judgment shall have maximum *res judicata*, collateral estoppel and all other preclusive effect in any and all claims for relief, causes of action, suits, petitions, demands in law or equity, or any allegations of liability, damages, debts, contracts, agreements, obligations, promises, attorneys' fees, costs, interest, or expenses that are based on or in any way related to the Released Claims.

7) The Court orders that this Final Approval Order and Judgment, the UCC Settlement Agreement, the Settlement which it reflects, and any and all acts, statements, documents, or proceedings relating to the UCC Settlement are not, and shall not be construed as, or used

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1 as an admission by or against Defendants or the Released Parties
2 of any fault, wrongdoing, or liability on their part, or of the
3 validity or certifiability for litigation of any Released Claim or the
4 existence or amount of any damages.

5 D. The Court orders the Parties and their counsel to implement and
6 consummate the UCC Settlement Agreement according to its terms and provisions,
7 including the payment of benefits and attorneys’ fees following the procedures
8 described in the UCC Settlement Agreement and described above. No attorneys’
9 fees, expenses, or incentive payments shall be made in connection with this action,
10 *Randolph*, or *Schnall* except as provided by the Fee Order.

11 E. The Court hereby dismisses on the merits and with prejudice the UCC
12 Claims only and enters Final Judgment on the UCC Claims only pursuant to Federal
13 Rule of Civil Procedure 54(b), and, there being no just reason for delay of the entry
14 of judgment on the UCC Claims, directs the clerk to enter this Final Approval Order
15 and Judgment forthwith.

16 F. Without affecting the finality of the Final Approval Order and
17 Judgment, the Court shall retain exclusive and continuing jurisdiction to enforce the
18 terms of the UCC Settlement Agreement, and all Parties and the UCC Settlement
19 Class members submit to the exclusive jurisdiction of the Court with respect to the
20 enforcement of the UCC Settlement Agreement.

21 G. In the event that the UCC Settlement does not become effective
22 according to the terms of the UCC Settlement Agreement, this Final Approval Order
23 and Judgment shall be rendered null and void as provided by the UCC Settlement
24 Agreement, shall be vacated, and all orders entered and releases delivered in

25 \\
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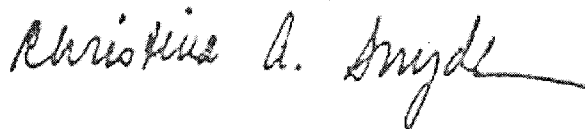
1 connection herewith shall be null and void to the extent provided by and in
2 accordance with the UCC Settlement Agreement.

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4 IT IS SO ORDERED:

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6 DATED: November 22, 2010



Christina A. Snyder
United States District Judge

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