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

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

17 Plaintiff,

18 vs.

19 AT&T MOBILITY CORPORATION
20 f/k/a CINGULAR WIRELESS
CORPORATION, a Delaware
21 corporation; NEW CINGULAR
WIRELESS SERVICES, INC. f/k/a
22 AT&T WIRELESS SERVICES, INC., a
23 Delaware corporation; AT&T
MOBILITY LLC f/k/a CINGULAR
24 WIRELESS LLC, a Delaware limited
25 liability company; and DOES 1 through
26 10, inclusive,

27 Defendants.

Case No. 2:05-CV-08842 CAS (CTx)

CLASS ACTION

**ORDER GRANTING
APPLICATION FOR:**

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

**(2) INCENTIVE AWARD FOR
CLASS REPRESENTATIVE**

Hearing Date: November 15, 2010
Hearing Time: Noon (specially set)
Courtroom: 5 – Spring Street
The Honorable Christina A. Snyder

1 The Court, having considered the papers filed in support of the Application
2 for: (1) Award of Attorneys' Fees and Reimbursement of Expenses to Class
3 Counsel; and (2) Incentive Award for Class Representative ("the Fee, Expense and
4 Incentive Award Application"), and having considered any and all objections filed
5 by class members to the Fee, Expense and Incentive Award Application, hereby
6 makes the following findings of fact, reaches the following conclusions of law, and
7 orders as follows:

8 **FINDINGS OF FACT**

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

11 (1) The parties, by and through their respective counsel, separately
12 negotiated and agreed upon an appropriate amount of attorneys' fees to be paid to
13 the law firms of Arias Ozzello & Gignac LLP and Foley Bezek Behle & Curtis,
14 LLP ("Class Counsel") in the total amount of \$2,725,000.00 for the legal services
15 performed by Class Counsel in this action.

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

18 (3) The negotiations were arms-length and took place in a separate
19 mediation session before the Hon. Howard B. Wiener (Ret.).

20 (4) Once an agreement was reached on the amount of attorneys' fees to be
21 paid to Class Counsel, Class Counsel and counsel for ATTM/AWS negotiated and
22 agreed upon a dollar cap amount of \$45,000.00 that ATTM/AWS would pay to
23 Class Counsel in reimbursement for the litigation-related expenses incurred by
24 Class Counsel, as well as a reasonable incentive award that ATTM/AWS agreed to
25 pay to plaintiff Heather Stern ("Plaintiff Stern") for her services as the class
26 representative in the amount of \$7500.00.

27 (5) Class Counsel's lodestar in the amount of \$1,230,098.00 is reasonable
28 and justified based on: (a) the market competitive hourly rates charged by Class

1 Counsel for the work that was performed; (b) the significant time and effort that
2 was expended by Class Counsel (more than 2800 hours); and (c) the duration of
3 the case (almost five years).

4 (6) The attorneys' fees requested in the amount of \$2,725,000.00
5 represent a multiplier of 2.22 which is reasonable and justified based on: (a) the
6 difficult and novel legal challenges faced by Class Counsel in this case; (b) the
7 risks and financial burdens that Class Counsel undertook in litigating this case on a
8 fully contingent basis; and (c) the significant benefits that are being made available
9 to the class members under the settlement.

10 (7) When analyzed as a percentage of the overall potential value of the
11 settlement, the attorneys' fees requested represent approximately 6.64% of the total
12 settlement value.

13 (8) Therefore, whether analyzed on a lodestar/multiplier basis or as a
14 percentage of the overall potential value of the settlement, the attorneys' fees
15 requested by Class Counsel in the amount of \$2,725,000.00 are fair and
16 reasonable.

17 (9) The expenses sought by Class Counsel in the amount of \$41,854.40
18 are less than the \$45,000.00 cap amount agreed to by Class Counsel under the
19 terms of the Settlement Agreement.

20 (10) The expenses for which Class Counsel seek reimbursement appear to
21 be reasonably and necessarily incurred in connection with the prosecution and
22 resolution of this action.

23 (11) The expenses that are reimbursed will not reduce the benefits
24 available to the class members in any way.

25 (12) The incentive award requested by Plaintiff Stern in the amount of
26 \$7500.00 is fair and reasonable in light of: (a) the significant amount of personal
27 time that Plaintiff Stern devoted to fulfilling her duties as a class representative in
28 this action; (b) the risks that Plaintiff Stern undertook in commencing and

1 proceeding with this class action; (c) the duration of the litigation (almost five
2 years); and (d) the significant benefits that are being made available to the class
3 members under the settlement.

4 (13) The Long Form Class Notice (“LFCN”) that was disseminated to class
5 members and that is posted on the Internet at www.awssettlement.com: (a) notifies
6 class members of the maximum amounts of attorneys’ fees, expenses and incentive
7 awards that will be sought; and (b) notifies class members that the Fee, Expense
8 and Incentive Award Application will be posted on the website on September 16,
9 2010.

10 (14) The notice portion of Class Counsel’s Fee, Expense and Incentive
11 Award Application prominently notifies all class members in CAPITALIZED
12 LETTERS of their right to object to the Fee, Expense and Incentive Award
13 Application in whole or in part, directs class members to ¶14 of the LFCN posted
14 on the website for instructions on how to object, and informs class members of the
15 deadline to object.

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

20 CONCLUSIONS OF LAW

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

23 (1) In a class action, the district court must exercise its inherent authority
24 to ensure that the amount and mode of payment of attorneys’ fees are fair and
25 appropriate. *Zucker v. Occidental Petroleum Corp.*, 192 F.3d 1323, 1328 (9th Cir.
26 1999).

27 (2) In calculating attorneys’ fees in class actions, the district court has
28 discretion to use either a percentage or lodestar method in order to calculate the

1 attorneys' fees to be awarded to counsel. *Hanlon v. Chrysler Corp.*, 150 F.3d
2 1011, 1029 (9th Cir. 1998).

3 (3) Under the lodestar method, the court can make adjustments to the
4 lodestar figure based on, *inter alia*, the riskiness of the lawsuit and the quality of
5 the attorney's work. *Jordan v. Multnomah Co.*, 815 F.2d 1258, 1262 n. 5 (9th Cir.
6 1986).

7 (4) In determining what qualifies as reasonable attorneys' fees under the
8 lodestar method, the court may consider the following factors: (1) the time and
9 labor required; (2) the novelty and difficulty of the questions involved; (3) the skill
10 required to perform the legal services properly; (4) the preclusion of other
11 employment by the attorneys due to acceptance of the case; (5) the customary fee;
12 (6) whether the fee is fixed or contingent; (7) time limitations imposed by the
13 client or the circumstances; (8) the amount involved and the results obtained; (9)
14 the experience, reputation, and ability of the attorneys; (10) the "undesirability" of
15 the case; (11) the nature and length of the professional relationship with the client;
16 and (12) awards in similar cases. *Kerr v. Screen Extras Guild, Inc.*, 526 F.2d 67,
17 71 (9th Cir. 1975).

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

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

24 (7) In a certified class action, the court may award reasonable attorneys'
25 fees, nontaxable costs and expenses that are authorized by law or by the parties'
26 agreement. Fed.R.Civ.P. 23(h); *Vincent v. Hughes Air West, Inc.*, 557 F.2d 759,
27 769 (9th Cir. 1977).

28

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

4 (9) The criteria that courts should consider when determining whether to
5 grant an incentive award and the amount of the award include: (a) the risk to the
6 class representative in commencing a class action, both financial and otherwise; (b)
7 the notoriety and personal difficulties encountered by the class representative; (c)
8 the amount of time and effort spent by the class representative; (d) the duration of
9 the litigation; and (e) the personal benefit, or lack thereof, enjoyed by the class
10 representative as a result of the litigation. *Van Vranken v. Atlantic Richfield Co.*,
11 901 F.Supp. 294, 299 (N.D.Cal.1995); *Staton v. Boeing*, 327 F.3d 938, 977 (9th
12 Cir. 2003).

13 (10) It is not uncommon for a court to award each class representative
14 several thousand dollars as an incentive award. *See, e.g., In re Mego Fin'l Corp.*
15 *Sec. Litig.*, 213 F.3d at 463 (approving incentive awards of \$5000 to the two class
16 representatives); *Van Vranken*, 901 F. Supp. at 300 (approving incentive award to
17 single class representative in the amount of \$50,000).

18 (11) It is imperative under Rule 23(h) that class members have an adequate
19 opportunity to oppose Class Counsel's Fee, Expense and Incentive Award
20 Application. *In re: Mercury Interactive Corp. Securities*, ___ F.3d ___ (9th Cir.
21 2010).

22 (12) Providing class members with an adequate opportunity to oppose
23 Class Counsel's Fee, Expense and Incentive Award Application requires that, at a
24 minimum, the deadline for filing objections to Class Counsel's Fee, Expense and
25 Incentive Award Application not predate the filing of Class Counsel's Fee,
26 Expense and Incentive Award Application. *Id.*

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ORDER

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

(1) Attorneys' fees in the total amount of \$2,725,000.00 are awarded to Class Counsel for their services in connection with the litigation and resolution of the claims asserted in this action.

(2) Class Counsel are to be reimbursed for their reasonable expenses and non-taxable costs incurred in connection with the litigation and resolution of the claims asserted in this action in the total amount of \$41,854.40.

(3) Plaintiff Stern is granted an incentive award in the amount of \$7,500.00.

IT IS SO ORDERED.

Dated: November 22, 2010


Hon. Christina A. Snyder