



8108689

FILED
ALAMEDA COUNTY

MAR 09 2010

CLERK OF THE SUPERIOR COURT

By A. James Taggart Deputy

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ALAMEDA

Coordination Proceeding
Special Title (Rule 1550(b))

In Re:
**CELLPHONE TERMINATION FEE
CASES**

This document relates to:

Meoli v. AT&T Wireless PCS, LLC, et al.
(Handset Locking and Related Claims against
AT&T Wireless PCS, LLC, et al.); and

Mendoza v. Cingular Wireless LLC, et al.
(Handset Locking and Related Claims against
Cingular Wireless LLC, et al.).

JUDICIAL COUNCIL COORDINATION
PROCEEDING NO. 4332

Assigned to: Judge Winifred Smith
wp
**[PROPOSED] ORDER RE:
PRELIMINARY APPROVAL OF
PROPOSED SETTLEMENT**

1 WHEREAS, Plaintiffs Leslie Armstrong, Riley Clark, Betty Jennings, Steve Kozack,
2 Sridhar Krishnan, Porsha Meoli, Joseph Panganiban, Jennifer Preuss, Jill Bonnington, Mike
3 Freeland, Kistler & Kistler, Astrid Mendoza, Ron Ng and Richard Yates in the above-captioned
4 actions, plaintiff Dennis M. Pickering Sr. in the action entitled *Pickering v. Cingular Wireless LLC*
5 *et al.* in the Circuit Court of Palm Beach County, 15th Judicial Circuit, Florida, Case No. 2004 CA
6 005060 and plaintiff Lawrence Graber in the action entitled *Graber v. AT&T Wireless PCS, LLC, et*
7 *al.*, Circuit Court of Palm Beach County, 15th Judicial Circuit, Florida, Case No. 2004 CA 004650
8 (collectively "Plaintiffs") and Defendants AT&T Mobility LLC (f/k/a Cingular Wireless LLC) and
9 AT&T Wireless Services, Inc. (collectively, "AT&T Mobility" or "Defendants") have reached a
10 proposed settlement and compromise of the disputes between them in these Actions, which is
11 embodied in the Settlement Agreement filed with the Court;

12 WHEREAS, the parties have applied to the Court for preliminary approval of the proposed
13 Settlement of the Actions, the terms and conditions of which are set forth in the Settlement
14 Agreement;

15 AND NOW, the Court, having read and considered the Settlement Agreement and
16 accompanying documents and the Motion for Preliminary Settlement Approval and Supporting
17 Papers, and the parties to the Settlement Agreement having consented to the entry of this order, and
18 all capitalized terms used herein having the meaning defined in the Settlement Agreement, IT IS
19 HEREBY ORDERED AS FOLLOWS:

20 1. Subject to further consideration by the Court at the time of the Final Approval
21 Hearing, the Court preliminarily approves the Settlement as fair, reasonable, and adequate to the
22 Settlement Class, as falling within the range of possible final approval, and as meriting submission
23 to the Settlement Class for its consideration.

24 2. For purposes of the Settlement only, the Court certifies the Settlement Class, which
25 consists of all persons in the United States, including Puerto Rico and all United States territories,
26 who have or had an AT&T Wireless, Cingular Wireless, and/or AT&T Mobility individual account
27 and who purchased, directly or from an indirect retailer, a wireless handset other than an Apple
28 iPhone for use with AT&T Wireless, Cingular Wireless, and/or AT&T Mobility service from

1 March 12, 1999 to the date on which Notice is issued pursuant to the Settlement Agreement. Any
2 judicial officer to whom the Actions are assigned is excluded from the Settlement Class.

3 3. The Court preliminarily finds, solely for purposes of considering this Settlement,
4 that the requirements of Cal. Code Civ. Proc. § 382 appear to be satisfied, including requirements
5 for the existence of an ascertainable class, a community of interest, and manageability of a
6 settlement class, that common issues of law and fact predominate, and that a settlement class is
7 superior to alternative means of resolving the claims and disputes at issue in these Actions.

8 4. The Court appoints Bramson, Plutzik, Mahler, & Birkhaeuser, LLP, Faruqi &
9 Faruqi, LLP, Gilman and Pastor LLP, Law Offices of Scott A. Bursor, Shepherd Finkelman Miller
10 & Shah, LLP, Reich Radcliffe LLP, Abernethy & Green, P.L.C., Consumer Watchdog and Weiss
11 & Lurie as Class Counsel for purposes of this settlement. The Court preliminarily finds that the
12 Class Representatives and Class Counsel fairly and adequately represent and protect the interests of
13 the absent Settlement Class Members in accordance with Cal. Code Civ. Proc. § 382.

14 5. A Final Approval Hearing shall be held before this Court at 9:00 a.m. on
15 July 2, 2010 in Department 23 of the Alameda County Superior Court, to address: (a)
16 whether the proposed Settlement should be finally approved as fair, reasonable and adequate; (b)
17 whether the Final Approval Order and Judgment should be entered; (c) whether Class Counsel's
18 application for attorneys' fees, expenses and incentive awards should be approved; and (d) any
19 other matters that the Court deems appropriate.

20 6. With the exception of such proceedings as are necessary to implement, effectuate
21 and grant final approval to the terms of the Settlement Agreement, all proceedings are stayed in
22 these Actions and all Settlement Class Members are enjoined from commencing or continuing any
23 action or proceeding in any court or tribunal asserting any claims encompassed by the Settlement
24 Agreement, unless the Settlement Class Member timely files a valid Request for Exclusion as
25 defined in the Settlement Agreement.

26 7. The Court approves, as to form and content, the publication Notice, substantially in
27 the form attached as Exhibit A hereto. On or before April 2, 2010, Defendants are
28

1 directed to cause to be published the Notice substantially in the form of Exhibit A hereto as
2 follows:

- 3 Parade – one issue;
- 4 USA Today – one issue;
- 5 Vista – one issue;
- 6 New York Times – one issue;
- 7 Washington Post – one issue;
- 8 Chicago Tribune – one issue;
- 9 Dallas Morning News – one issue;
- 10 Philadelphia Inquirer – one issue;
- 11 Los Angeles Times – four (4) consecutive weeks;
- 12 San Francisco Chronicle – four (4) consecutive weeks;
- 13 San Diego Tribune – four (4) consecutive weeks;
- 14 Sacramento Bee – four (4) consecutive weeks;
- 15 Modesto Bee – four (4) consecutive weeks;
- 16 Fresno Bee – four (4) consecutive weeks;
- 17 Press-Enterprise – four (4) consecutive weeks;
- 18 Orange County Register – four (4) consecutive weeks.

19 No later than thirty (30) days after the completion of the publication notice, Defendants shall file
20 with the Court declarations attesting to compliance with this Order.

21 8. The Court finds that the Parties' plan for providing notice to the Settlement Class
22 (the "Notice Plan") described in Article IV of the Settlement Agreement constitutes the best notice
23 practicable under the circumstances and shall constitute due and sufficient notice to the Settlement
24 Class of the pendency of these Actions, certification of the Settlement Class, the terms of the
25 Settlement Agreement, and the Final Approval Hearing, and complies fully with the requirements
26 of the California Rules of Court, the California Code of Civil Procedure, the Constitution of the
27 State of California, the United States Constitution, and any other applicable law.

28

1 9. The Court further finds that the Notice Plan described in Article IV of the Settlement
2 Agreement will adequately inform members of the Settlement Class of their right to exclude
3 themselves from the Settlement Class so as not to be bound by the terms of the Settlement
4 Agreement. Any member of the Settlement Class who desires to be excluded from the Settlement
5 Class, and therefore not bound by the terms of the Settlement Agreement, must submit to
6 Defendants' Counsel and Class Counsel, pursuant to the instructions set forth in the Notice, a
7 timely and valid written Request for Exclusion, submitted online or postmarked at least thirty (30)
8 days prior to the date set for the Final Approval Hearing in paragraph 5 above.

9 10. Any member of the Settlement Class who elects to be excluded shall not be entitled
10 to receive any of the benefits of the Settlement, shall not be bound by the release of any claims
11 pursuant to the Settlement Agreement, and shall not be entitled to object to the Settlement or appear
12 at the Final Approval Hearing. The names of all Persons timely submitting valid Requests for
13 Exclusion shall be provided to the Court.

14 11. Any Settlement Class Member who does not submit a valid and timely Request for
15 Exclusion may object to the Settlement Agreement, to Class Counsel's application for attorneys'
16 fees and costs, or to the proposed Final Approval Order and Judgment. Any such Settlement Class
17 Member shall have the right to appear and be heard at the Final Approval Hearing, either personally
18 or through an attorney retained at the Settlement Class Member's own expense. Any such
19 Settlement Class Member must file with the Court and serve, no later than thirty (30) days prior to
20 the date of the Final Approval Hearing, a written notice of intention to appear together with
21 supporting papers including a detailed statement of the specific objections made.

22 12. Service of all papers on counsel for the Parties shall be made as follows: for Class
23 Counsel, to Alan Plutzik, Esq., Bramson, Plutzik, Mahler, & Birkhaeuser, LLP, 2125 Oak Grove
24 Rd., Suite 120, Walnut Creek, CA 94598 and Scott A. Bursor, Esq., Law Offices of Scott A.
25 Bursor, 369 Lexington Avenue, 10th Floor, New York, NY 10017; and for Defendants' Counsel, to
26 Seamus Duffy, Esq., Drinker Biddle & Reath LLP, One Logan Square, Ste. 2000, Philadelphia, PA
27 19103-6996. Only Settlement Class Members who have filed and served valid and timely notices
28

1 of intention to appear, together with supporting papers, shall be entitled to be heard at the Final
2 Approval Hearing.


3 13. Any Settlement Class Member who does not make an objection in the time and
4 manner provided shall be deemed to have waived such objection and forever shall be foreclosed
5 from making any objection to the fairness or adequacy of the proposed settlement as incorporated
6 in the Settlement Agreement, the payment of attorneys' fees and costs, or the Final Approval Order
7 and Judgment.

8 14. In the event that the proposed Settlement is not approved by the Court, or in the
9 event that the Settlement Agreement becomes null and void pursuant to its terms, this Order and all
10 orders entered in connection therewith shall become null and void, shall be of no further force and
11 effect, and shall not be used or referred to for any purposes whatsoever in these Actions or in any
12 other case or controversy; in such event the Settlement Agreement and all negotiations and
13 proceedings directly related thereto shall be deemed to be without prejudice to the rights of any and
14 all of the Parties, who shall be restored to their respective positions as of the date and time
15 immediately preceding the execution of the Settlement Agreement.

16 15. The Court may, for good cause, extend any of the deadlines set forth in this Order
17 without further notice to the Settlement Class Members. The Final Approval Hearing may, from
18 time to time and without further notice to the Settlement Class, be continued by order of the Court.

19 **IT IS SO ORDERED.**

20
21
22 Dated: MAR 09 2010


Honorable Winifred Smith
Judge of the Alameda County Superior Court

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF ALAMEDA**

**CELLPHONE TERMINATION FEE CASES
JCCP4332**

**CERTIFICATE OF SERVICE BY MAIL: ORDER re: PRELIMINARY APPROVAL OF PROPOSED
SETTLEMENT**

I certify that I am not a party to this cause and that I am a clerk of the Superior Court of California, County of Alameda and that a true and correct copy of the foregoing document was mailed first class, postage prepaid, in a sealed envelope, addressed as shown below, and that the mailing of the foregoing and execution of this certificate occurred at 1225 Fallon Street, Oakland, CA 94612

Alan R. Plutzik, Esq.
L. Timothy Fisher
Bramson Plutzik, Mahler &
Birkhaeuser, LLP
2125 Oak Grove Road, Suite 120
Walnut Creek, CA 94598

Michael J. Stortz
Matthew P. Smith
Drinker Biddle & Reath LLP
50 Fremont Street, 20th Floor
San Francisco, CA 94105-2235

Christopher B. Hockett
Neal Potischman
Mark Kokanovich
Sandra West
Davis Polk & Wardwell
1600 El Camino Real
Menlo Park, CA 94025

Dominic Surprenant
A. Brooks Gresham
Michael Fazio
Quinn Emanuel Urquhart Oliver &
Hedges, LLP
865 S. Figueroa St., 10th Floor
Los Angeles, CA 90017-2543

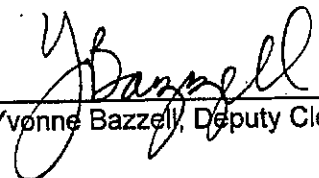
Scott A. Bursor, Esq.
Law Offices of Scott A. Bursor
369 Lexington Ave., 10th Flr
New York, NY 10017

Jacqueline Mottek
Positive Legal Group, LLP
38 Heather Way
Larkspur, CA 94939

Anthony A. Ferrigno, Esq.
Law Offices of Anthony A. Ferrigno
501 N. El Camino Real, Ste 200
San Clemente, CA 92674

Franklin & Franklin
J. David Franklin
550 West "C" Street, Suite 950
San Diego, CA 92101

Dated: March 9, 2010


Yvonne Bazzell, Deputy Clerk