

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

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

IN RE: TRACFONE UNLIMITED
SERVICE PLAN LITIGATION

Case No. 13-cv-03440-EMC

~~PROPOSED~~ ORDER GRANTING
PRELIMINARY APPROVAL OF CLASS
SETTLEMENT

Date: February 19, 2015
Time: 1:30 p.m.
Location: Courtroom 5, 17th Floor
Judge: Hon. Edward M. Chen

1 This matter comes before the Court upon Plaintiffs' Motion for Preliminary Approval of
 2 Class Settlement. The Parties have entered into a Class Settlement Agreement (the
 3 "Settlement") which, if approved, would resolve these four consolidated class actions¹
 4 (collectively, the "Action" or the "Class Action Lawsuits"). Upon review and consideration of
 5 the motion papers and the Settlement and all exhibits thereto, including the proposed forms of
 6 notice to the Class and the proposed Claim Form, the Court finds that there is sufficient basis
 7 for: (1) granting preliminary approval of the Settlement; (2) provisionally certifying the Class for
 8 settlement purposes only; (3) appointing Class Counsel and Plaintiffs to represent the Class; (4)
 9 approving the Parties' proposed notice program and forms of notice substantially similar to those
 10 forms attached to the Settlement, and directing that notice be disseminated to the Class pursuant
 11 to the notice program provided in the Settlement; (5) approving the Parties' proposed Claim
 12 Form, and approving the procedures set forth in the Settlement for Class Members to submit
 13 claims, exclude themselves from the Class, and object to the Settlement; (6) appointing a
 14 Settlement Administrator to conduct the duties assigned to that position in the Settlement; (7)
 15 staying all non-Settlement related proceedings in the Action pending final approval of the
 16 Settlement; and (8) setting a hearing (the "Fairness Hearing"), at which the Court will consider:
 17 (a) whether to grant final approval of the Settlement; (b) Class Counsel's application for
 18 attorneys' fees and costs; and (c) any request for service award for the Plaintiffs.

18 IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

19 1. Capitalized terms not otherwise defined herein shall have the same meaning as set
 20 forth in the Settlement.

21 2. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332, and has
 22 personal jurisdiction over the Parties. Venue is proper in this District.

23 3. This Action is provisionally certified as a class action, for the purposes of
 24 settlement only, pursuant to Federal Rules of Civil Procedure 23(a), 23(b)(3) and 23(e). The
 25 Class is defined as follows:
 26

27 ¹ *Hansell v. TracFone Wireless, Inc., et al.*, Case No. 13-cv-03440-EMC (N.D. Cal.); *Gandhi v.*
 28 *TracFone Wireless, Inc.*, Case No. 13-cv-05296-EMC (N.D. Cal.); *Blaqmoor v. TracFone*
Wireless, Inc., Case No. 13-cv-05295-EMC (N.D. Cal.); and *Browning v. TracFone Wireless,*
Inc., et al., Case No. 14-cv-01347-EMC (N.D. Cal.).

1 All persons who purchased, in the United States, a Straight Talk, Net10, Simple
2 Mobile, or Telcel America wireless service plan with “unlimited” data, who, at
3 any time during the Class Period (i.e., from July 24, 2009 through and including
4 December 31, 2014), at TracFone’s request, had their data usage Throttled,
5 Suspended, or had all of their Services Terminated prior to the expiration of their
6 service plan. Defendants are excluded from the Class as well as any entity in
7 which either of the Defendants has a controlling interest, along with Defendants’
8 legal representatives, officers, directors, assignees, and successors. Also excluded
9 from the Class is any judge to whom the Class Action Lawsuits are assigned,
10 together with any relative of such judge and the spouse of any such persons.

11 4. Certification of the Class shall be solely for settlement purposes and without
12 prejudice to the Parties in the event the Settlement is not finally approved by this Court or
13 otherwise does not take effect.

14 5. The Court preliminarily approves the proposed Settlement as fair, reasonable and
15 adequate, entered into in good faith, free of collusion and within the range of possible judicial
16 approval.

17 6. The Court appoints the following as Class Counsel: Michael W. Sobol of Lieff,
18 Cabraser, Heimann & Bernstein, LLP; Daniel M. Hattis of Hattis Law; and John A. Yanchunis,
19 Sr. and J. Andrew Meyer of Morgan & Morgan Complex Litigation Group.

20 7. The Court appoints Plaintiffs David Hansell, Edward Tooley, Christopher Valdez,
21 Mona Gandhi, Marisha Johnston, Marshall Tietje, Martin Blaqmoor, and John Browning as class
22 representatives for the Class.

23 8. The Court appoints Analytics LLC (“Analytics”) to serve as the Settlement
24 Administrator, and directs Analytics to carry out all duties and responsibilities of the Settlement
25 Administrator specified in the Settlement.

26 9. The Court approves the program for disseminating notice to the Class set forth in
27 the Settlement (the “Notice Program”). The Court approves the form and content of the
28 proposed forms of notice, in the forms attached to the Settlement as Exhibits 2, 6, 7, and 8. The
Court finds that the proposed forms of notice are clear and readily understandable by Class
Members. The Court finds that the Notice Program, including the proposed forms of notice,
constitutes the best notice practicable under the circumstances, constitutes valid, due and
sufficient notice to the Class in full compliance with the requirements of applicable law,

1 including Federal Rule of Civil Procedure 23 and the Due Process Clause of the United States
2 Constitution, and is the only notice to the Class of the Settlement that is required.

3 10. The Court approves the form and content of the proposed Claim Form, in the
4 form attached to the Notice of Filing Amended Claim Form, filed February 19, 2015, and
5 approves the procedures set forth in the Settlement for Class Members to submit Claims.

6 11. Pursuant to the terms of the Settlement, to the extent TracFone has not already
7 done so, upon the entry of this Order, TracFone shall provide to the Settlement Administrator the
8 Customer Data for the Settlement Administrator's use in disseminating notice and processing
9 Claims. The Customer Data shall include all information available to TracFone regarding the
10 Throttling, Suspension, and Services Terminated that occurred, and the timing thereof, for each
11 Affected TracFone Account during the Class Period, as well as any contact information that
12 TracFone has in its records for each Affected TracFone Account, including customer name(s)
13 last known mailing address(es), and email address(es).

14 12. The "Notice Date" shall be March 21, 2015.

15 13. Mailed Notice. By no later than the Notice Date, the Settlement Administrator
16 shall update the mailing addresses in the Customer Data through the National Change of Address
17 Database, and send the Summary Settlement Notice, substantially in the form attached as Exhibit
18 6 to the Settlement, by First-Class U.S. Mail, proper postage prepaid, to each mailing address in
19 the Customer Data, as updated. For any mailed Summary Settlement Notices that are returned
20 with forwarding address information, the Settlement Administrator shall re-mail the Summary
21 Settlement Notice once to the new address indicated. For any mailed Summary Settlement
22 Notices that are returned undeliverable without forwarding address information, the Settlement
23 Administrator shall make reasonable efforts to identify an updated address and promptly re-mail
24 the Summary Settlement Notice to the extent an updated address is identified.

25 14. Email Notice. By no later than the Notice Date, the Settlement Administrator
26 shall email the Email Summary Notice, substantially in the form attached as Exhibit 8 to the
27 Settlement, to each email address in the Customer Data that is not indicated in the Customer
28 Data as being on TracFone's do not contact list. By no later than seven (7) days following the
Notice Date, the Settlement Administrator shall email the Email Summary Notice, substantially

1 in the form attached as Exhibit 8 to the Settlement, to each email address that is not in the
2 Customer Data but that is provided on a Claim Form received by the Settlement Administrator
3 prior to or on the Notice Date. The “Sender” address and subject lines for all emails covered by
4 this paragraph shall be as set forth in the Settlement.

5 15. Publication, Media, and Internet Notice. Notice shall also be provided via
6 publication notice of the Summary Settlement Notice, substantially in the form attached as
7 Exhibit 6 to the Settlement, and via a media and Internet notice program, including banner ads
8 on Internet sites and mobile applications targeted to the Class, as set forth in the Settlement. The
9 publication, media, and Internet notice program described in this paragraph shall commence as
10 soon as practicable following the entry of this Order and, in all events, shall commence not later
11 than the Notice Date.

12 16. Additional Internet-Based Notice. Beginning no later than the Notice Date, and
13 lasting until and through the Claim Deadline, Defendants shall cause a notice to be posted
14 prominently on the Straight Talk, Net10, Simple Mobile, and Telcel America brands’ Facebook
15 pages and Internet home pages—including the pages that customers view when logging into
16 their online TracFone accounts. The content of such notices shall be as set forth in the
17 Settlement.

18 17. SMS Notice. The Court directs TracFone to send, by no later than seven (7) days
19 following the Notice Date, via SMS (text message), the SMS Notice, substantially in the form
20 attached as Exhibit 7 to the Settlement, to all Class Members who, on the date the SMS
21 messages are sent, are current subscribers to a TracFone data service plan and who have not
22 opted out of receiving such messages. The recipients of such SMS messages shall not be
23 charged for such messages. The Court expressly finds that the SMS messages ordered to be sent
24 under this paragraph are informational messages pertaining to the TracFone subscribers’
25 service. By no later than seven (7) days following the date the SMS messages are sent,
26 TracFone shall also provide to the Settlement Administrator a list of Class Members who are
27 current subscribers to a TracFone data service plan and the corresponding telephone numbers as
28 of the date the SMS messages are sent.

18. Settlement Website. The Settlement Administrator shall establish and maintain

1 an Internet website, at the web address www.PrepaidPhoneRefund.com (“Settlement Website”)
2 where Class Members can obtain further information about the terms of the Settlement, their
3 rights, important dates and deadlines, and related information. Class Members shall also be able
4 to submit Claim Forms electronically via the Settlement Website. The Settlement Website shall
5 include, in PDF format, the operative complaints in the Class Action Lawsuits, the Settlement
6 Agreement, the Class Notice, Class Counsel’s Fee Application (after it is filed), and other case
7 documents as agreed upon by the Parties and/or required by the Court. The Settlement Website
8 shall be optimized for display on mobile phones. The Settlement Website shall be operational
9 and live by no later than one (1) business day following the entry of this Order.

10 19. Toll-Free Telephone Number. The Settlement Administrator shall establish and
11 maintain a toll-free telephone number (“Toll-Free Number”) where Class Members can obtain
12 further information about the Settlement and their rights, and request that a hard copy Claim
13 Form or Class Notice be mailed to them. The Toll-Free Number shall be operational and live by
14 no later than one (1) business day following the entry of this Order.

15 20. By no later than forty-five (45) days before the date of the Fairness Hearing, the
16 Settlement Administrator shall file with the Court declaration(s) detailing the scope, methods,
17 and results of the Notice Program.

18 21. Settlement Class Members who wish to submit a Claim shall have the option of
19 submitting Claim Forms online via the Settlement Website or by mail. Claim Forms submitted
20 online must be submitted by no later than June 19, 2015 (hereinafter the “Claim Deadline”).
21 Claim Forms submitted by mail must be postmarked no later than the Claim Deadline.

22 22. Any Class Member who wishes to be excluded from the Class must mail a written
23 request for exclusion to the Settlement Administrator at the address provided in the Class Notice,
24 postmarked no later than May 20, 2015, and must include: (a) their full name, address and
25 telephone number; (b) a statement that they want to be excluded from the settlement in *In re*
TracFone Unlimited Service Plan Litigation; and (c) their signature.

26 23. If the Settlement is finally approved and becomes effective, any Class Member
27 who does not send a timely and valid request for exclusion shall be a Settlement Class Member
28 and shall be bound by all subsequent proceedings, orders, and judgments in the Class Action

1 Lawsuits, including, but not limited to, the Release, even if he or she has litigation pending or
2 subsequently initiates litigation against Defendants relating to the claims and transactions
3 released in the Class Action Lawsuits.

4 24. Any Settlement Class Member may object to the Settlement, Class Counsel's
5 request for attorneys' fees and expenses ("Fee Application"), and/or any request for service
6 awards for the Plaintiffs. To be considered, an objection must be made in writing, must be
7 mailed to the Settlement Administrator at the address provided in the Class Notice, postmarked
8 no later than May 20, 2015, and must include the following: (1) the name of this case; (2) the
9 objector's full name, address and telephone number; (3) the basis upon which the objector claims
10 to be a Class Member, including: (a) the brand(s) (Straight Talk, Net10, Simple Mobile, or
11 Telcel America) of the mobile service that the objector believes may have been subject to
12 throttling, suspension, or termination; (b) their mobile telephone number(s) for the brand(s); and
13 (c) the approximate time period when they had that mobile service; (4) all grounds for the
14 objection, accompanied by any legal and factual support; (5) whether the objector is represented
15 by counsel, and if so the identity of such counsel; (6) a statement confirming whether the
16 objector intends to personally appear and/or testify at the Fairness Hearing; (7) the identity of
17 any counsel who will appear at the Fairness Hearing on the objector's behalf; (8) a list of any
18 witnesses the objector will call to testify, or any documents or exhibits they may use, at the
19 Fairness Hearing; and (9) the objector's signature.

20 25. Any Settlement Class Member who submits a timely and valid written objection
21 may appear at the Fairness Hearing, either in person or through personal counsel hired at the
22 Settlement Class Member's own expense, if they indicate in their written objection their intent to
23 appear at the Fairness Hearing. Any Settlement Class Member who does not submit a timely
24 and valid objection shall be deemed to have waived all objections and shall forever be foreclosed
25 from making any objection to the fairness, adequacy or reasonableness of the Settlement and any
26 Final Order and Final Judgment entered approving it, Class Counsel's Fee Application or any
27 request for service awards for the Plaintiffs.

28 26. The Settlement Administrator shall promptly after receipt provide to Class
Counsel and Defendants' Counsel copies of any requests for exclusion and objections, including

1 any related correspondence.

2 27. By no later than ten (10) days before the Fairness Hearing, the Settlement
3 Administrator shall file with the Court: (a) a complete and final list of Class Members who
4 submitted timely and valid requests to exclude themselves from the Class; and (b) copies of all
5 timely and valid written objections and requests to appear at the Fairness Hearing.

6 28. The Court directs that the Fairness Hearing be scheduled for June 23, 2015, at
7 2:30 p.m., to assist the Court in determining whether the Settlement should be finally approved
8 as fair, reasonable and adequate to the Settlement Class Members; whether Final Judgment
9 should be entered dismissing the Action and the Class Action Lawsuits with prejudice; whether
10 Class Counsel's Fee Application should be approved; and whether any request for service
11 awards for the Plaintiffs should be approved.

12 29. The Parties shall file any motions in support of final approval of the Settlement
13 by no later than April 20, 2015. Class Counsel shall file their Fee Application and any request
14 for Plaintiff service awards by no later than April 20, 2015. After it is filed, Class Counsel's Fee
15 Application and request for Plaintiff service awards shall be posted on the Settlement Website.

16 30. The Parties shall file any responses to any Settlement Class Member objections,
17 and any reply papers in support of final approval of the Settlement or Class Counsel's Fee
18 Application or request for Plaintiff service awards, by no later than June 9, 2015.

19 31. The Court reserves the right to modify the date of the Fairness Hearing and
20 related deadlines set forth herein. In the event the Fairness Hearing is moved, the new date and
21 time shall be posted on the Settlement Website.

22 32. This Order shall become null and void and shall be without prejudice to the rights
23 of the Parties, all of whom shall be restored to their respective positions existing immediately
24 before the Court entered this Order, if: (a) the Settlement is not finally approved by the Court, or
25 does not become final, pursuant to the terms of the Settlement; (b) the Settlement is terminated
26 in accordance with the Settlement; or (c) the Settlement does not become effective pursuant to
27 the terms of the Settlement for any other reason. In such event, the Settlement shall become null
28 and void and be of no further force and effect, and neither the Settlement nor the Court's orders
relating to the Settlement, including this Order, shall be used for any purpose.

1 33. If the Settlement does not become final and effective pursuant to the terms of the
2 Settlement, this Order shall have no force or effect, and shall not be construed or used as an
3 admission, concession, or declaration by or against Defendants of any fault, wrongdoing, breach,
4 or liability, or be construed or used as an admission, concession, or declaration by or against any
5 of the Plaintiffs or Class Members that their claims lack merit or that the relief requested is
6 inappropriate, improper, or unavailable, or as a waiver by any party of any defenses or claims he,
7 she, or it may have in this Action or in any other lawsuit.

8 34. Pending the final determination of whether the Settlement should be approved, all
9 proceedings in this Action and the Class Action Lawsuits, except as may be necessary to
10 implement the Settlement or comply with the terms of the Settlement, are hereby stayed.

11 35. Pending the final determination of whether the Settlement should be approved,
12 Plaintiff and each Settlement Class Member, and any person purportedly acting on behalf of any
13 Settlement Class Member(s), are hereby enjoined from commencing, pursuing, maintaining,
14 enforcing or prosecuting, either directly or indirectly, any Released Claims in any judicial,
15 administrative, arbitral or other forum, including but not limited to in the Class Action Lawsuits,
16 against any of the Released Parties, provided that this injunction shall not apply to the claims of
17 any Class Members who have timely and validly requested to be excluded from the Class. Such
18 injunction shall remain in force until final approval or until such time as the Parties notify the
19 Court that the Settlement has been terminated. This injunction is necessary to protect and
20 effectuate the Settlement, this Order and this Court's authority regarding the Settlement, and is
21 ordered in aid of this Court's jurisdiction and to protect its judgments.

22 36. The following chart summarizes the dates and deadlines set by this Order:

Last day for TracFone to provide the Customer Data to the Settlement Administrator	Upon entry of this Order if not already completed
Notice Date	March 21, 2015
Last day for: (a) the Parties to file any motions in support of final approval of the Settlement; and (b) Class Counsel to file their Fee Application and request for service awards for Plaintiffs	April 20, 2015

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

Opt-Out Deadline	May 20, 2015
Objection Deadline	May 20, 2015
Last day for the Parties to file any responses to objections, and any reply papers in support of final approval of the Settlement or Class Counsel’s Fee Application or request for Plaintiff service awards	June 9, 2015
Claim Deadline	June 19, 2015
Fairness Hearing	June 23, 2015 at 2:30 p.m.

IT IS SO ORDERED.

Dated: 2/20/15

