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Attorneys for Plaintiff Class

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF LOS ANGELES**

DONALD SIPPLE, JOHN SIMON, KARL  
SIMONSEN, and CHRISTOPHER JACOBS,  
Settlement Class Representatives;  
NEW CINGULAR WIRELESS PCS LLC, a  
Delaware limited liability company,

Plaintiffs,

vs.

The City of Alameda, et al. and DOES 1-50,  
inclusive,

Defendants.

CASE NO. BC462270

**SECOND JOINT INITIAL STATUS  
CONFERENCE REPORT**

DATE: October 13, 2011  
TIME: 1:30 p.m.  
DEPT: 307  
JUDGE: Honorable William F.  
Highberger

**1. ALL PARTIES AND COUNSEL:**

A list of all parties and counsel, along with e-mail addresses, is attached hereto as Exhibit

"1".

1           **2.     ADDITIONAL PARTIES:**

2           No additional parties are contemplated.

3           **3.     CLAIMS AND CROSS-CLAIMS:**

4           Plaintiffs NEW CINGULAR WIRELESS PCS LLC (Cingular) and the class of its  
5 customers certified for settlement purposes in the MDL proceeding entitled *In re: AT&T Mobility*  
6 *Wireless Data Services Sales Tax Litigation*, in the Northern District of Illinois, Eastern Division,  
7 under MDL No. 2147, Case No. 10 c 2278, allege that Cingular (formally an AT&T-named entity)  
8 inadvertently collected from its customers, and passed through to the city and county defendants  
9 herein, certain Utility Users taxes, and other taxes and fees, collected based upon internet service  
10 charges in violation of the Internet Tax Freedom Act ("ITFA"). Plaintiffs do not anticipate any  
11 cross-claims.

12           **4.     Judge's Possible Claim**

13           At the initial status conference on September 2, 2011, the Honorable William Highberger  
14 disclosed that he might be included in the group of customers that paid UUT to the Cities of Los  
15 Angeles and Claremont, but that he did not have any specific knowledge of whether, in fact, he  
16 was.

17           The City of Los Angeles has reviewed the information submitted by AT&T with its original  
18 administrative claim and determined that the following individual is purportedly included in the  
19 refund claim: William Highberger, at a Pacific Palisades address, with a stated claim amount of  
20 \$218.09. Plaintiffs estimate that the recoverable amount under the one-year claim statute would be  
21 approximately 50% of this amount. None of the liaison counsel object to his honor presiding over  
22 this matter. The City of Los Angeles cannot determine what period of time this claim amount  
23 covers or whether any part of it falls within the applicable one-year statute of limitations. The City  
24 of Los Angeles is hesitant to disclose the exact address of this possible claimant in a publicly filed  
25 document, but its counsel will provide such information to the judge at the status conference.

26           **5.     Defendants' Potential Challenges to the Pleadings**

27           The Liaison Defense Counsel group for defendant cities [Colantuono & Levin, PC;  
28 Richards, Watson & Gershon; and, Jarvis, Fay, Doporto & Gibson, LLP] has identified the

1 following categories of preliminary challenges to the complaint:

- 2 a. Venue: Several defendant cities anticipate filing a motion to transfer venue to their  
3 home county. Though not intended to be an exhaustive list of the bases for such  
4 motions, the grounds include the venue requirements in Code of Civil Procedure  
5 sections 394 and 395. A ruling on such motions likely will require the court to  
6 evaluate the standing and joinder issues noted below as well.
- 7 b. Standing of individual plaintiffs: Several defendants anticipate challenging (either  
8 via demurrer or motion to strike) the standing of the individual plaintiffs to maintain  
9 an action against the defendant cities. Class counsel has indicated that these  
10 plaintiffs are named in a representative capacity on behalf of the California class  
11 which was previously certified in Illinois. Defendants dispute that class  
12 certification in the federal suit in Illinois is sufficient to establish standing in the  
13 California suit. None of the Defendants in this action were parties to the Illinois  
14 federal lawsuit, and the class certification in the Illinois federal lawsuit was for  
15 settlement purposes.
- 16 c. Standing of New Cingular Wireless PCS LLC: Several defendants anticipate  
17 challenging (either via demurrer or motion to strike) the standing of New Cingular  
18 to maintain an action against each individual city. Though not intended to be an  
19 exhaustive list of the bases for such a challenge, the grounds include New  
20 Cingular's standing for such a claim generally, as well as its standing for a refund  
21 claim under each defendant's applicable refund ordinance. Because each defendant  
22 has its own refund ordinance, this latter issue will require a city-by-city (or county)  
23 analysis.
- 24 d. Joinder defects: Several defendants anticipate challenging Plaintiffs' joinder of their  
25 claims against the defendant cities on the grounds, in part, that such joinder is not  
26 proper pursuant to Code of Civil Procedure sections 378 or 379. Analysis of this  
27 issue will overlap with the standing issues outlined above.

28 Because a ruling as to which plaintiff, if any, has standing to maintain an action against a

1 particular city or county may eliminate the need for a particular defendant to file a motion to  
2 transfer venue, the Liaison Defense Counsel group suggests the court first set a briefing schedule  
3 for motions regarding standing and misjoinder, and defer the briefing schedule regarding venue  
4 until such issues are resolved. A motion filed by any particular defendant on these initial issues  
5 should not be considered a waiver of that defendant's right to file a later motion to transfer venue.

6 Per the Court's instruction at the initial status conference, the challenges identified above  
7 are intended by defendants to enumerate only those issues amenable to resolution at the early  
8 pleading stage and are not inclusive of other defenses available to each defendant such as whether  
9 New Cingular complied with each defendant's administrative claim procedures, whether the  
10 claimed amounts are, in fact, exempt under the ITFA, whether the grandfather provisions of the  
11 ITFA apply to a particular defendant, etc.

12 **6. SERVICE LISTS AND PROCEDURES FOR EFFICIENT FILING:**

13 A service list is attached hereto as Exhibit "1". The parties have implemented electronic  
14 service.

15 **7. JURISDICTION AND VENUE ISSUES:**

16 Plaintiffs have elected to file this action in Los Angeles as plaintiffs contend Los Angeles  
17 has the largest claim, numerous city defendants are located in and around the city of Los Angeles,  
18 and Los Angeles provides a central venue easily reached by defendants. Defendants, particularly  
19 those defendants located outside the Los Angeles area, dispute that Los Angeles is a central venue  
20 that is easily reached. Defendants reserve the right to challenge both jurisdiction and venue.

21 **8. ARBITRATION CLAUSES:**

22 The parties currently are not aware of any applicable arbitration clauses.

23 **9. RELATED LITIGATION:**

24 This action arises from the MDL case entitled *In re: AT&T Mobility Wireless Data Services*  
25 *Sales Tax Litigation*, in the Northern District of Illinois, Eastern Division, under MDL No. 2147,  
26 Case No. 10 c 2278, wherein numerous cases were coordinated and settled, the final approval  
27 Order being issued on June 2, 2011. Pleadings in the related matter may be accessed online at  
28 <http://www.pacer.gov/>. None of the defendants was a party in that litigation. No other California

1 related matters are anticipated involving California cities or counties.

2 **10. FACTUAL AND LEGAL ISSUES:**

3 Plaintiffs assert that AT&T improperly collected certain taxes which were then passed  
4 through to the defendants herein. Cingular and the class of taxpayers who were previously  
5 certified for settlement purposes in the Illinois Federal Court and who allegedly paid those taxes  
6 seek reimbursement of those allegedly unlawfully collected amounts consistent with the claims  
7 statutes for each city.

8 Defendants assert the core factual and legal issues include, but are not limited to:

- 9
- 10 • What are the applicable state, local, and other statutes concerning claims  
11 presentation for each defendant?
  - 12 • Have plaintiffs adequately presented their claims and exhausted applicable  
13 administrative remedies under the applicable claims presentation statutes and local  
14 ordinances, including, but not limited to:
    - 15 ◦ Were the claims timely presented?
    - 16 ◦ Who is/are the proper claimant(s) and were plaintiffs' claims presented on  
17 behalf of a proper claimant?
    - 18 ◦ Was the settlement class' assignment of its rights to assert the refund claim  
19 to New Cingular Wireless, PCS LLC valid? If the assignment was valid,  
20 what is the scope and duration of the assignment?
    - 21 ◦ Did the claims provide sufficient notice of the underlying facts and law  
22 giving rise to the claim?
    - 23 ◦ Are the claims barred because, while separately listed, they were presented  
24 together on the same computer disk?
  - 25 • Does any individual taxpayer, or the taxpayer class, have standing to file suit? May  
26 this action proceed forward as a class action?
  - 27 • Are the claims barred at least in part by applicable statutes of limitation?
  - 28 • Does New Cingular Wireless PCS LLC have standing?
  - Is the underlying computer data forming the basis of plaintiffs' claims accurate? Did

1 AT&T correctly calculate the taxes paid to each defendant? Is AT&T correct in its  
2 representation that none of the amounts for which plaintiffs are seeking  
3 reimbursement were "bundled" as that term is defined in the ITFA?

- 4 • Does the ITFA prohibit the taxes challenged herein?
- 5 • Are any of the taxes challenged herein subject to the ITFA's grandfathering  
6 provision or other exceptions?
- 7 • Does CingularWireless PCS LLC have any claim to present on its own behalf, has it  
8 done so, and, if such claim is in indemnity, did Cingular Wireless PCS LLC timely  
9 present its claim for indemnity as required by the California Government Code?
- 10 • Are the plaintiffs properly joined in this action?

11 **11. DISCOVERY:**

12 This case turns primarily on legal issues, but does involve some factual issues such as  
13 whether plaintiffs complied with the applicable claiming requirements and what types of services  
14 plaintiffs claim are exempt from taxation. Plaintiffs do not anticipate that discovery will be  
15 substantial. The parties currently do not believe discovery will need to be conducted in phases or  
16 limited in any manner. Plaintiffs request a discovery cutoff date of April 1, 2012. Defendants  
17 believe that a discovery cutoff of April 1, 2012 is much too early and suggest that a discovery cut-  
18 off date not be set until after the basic issues of venue, jurisdiction, standing, and joinder have  
19 been resolved.

20 **12. DISCOVERY ISSUES OF ELECTRONICALLY STORED INFORMATION:**

21 Cingular has substantial data bases relating to the claims presented. The data is being  
22 preserved. Plaintiffs contend data relevant to each claim against each defendant has already been  
23 provided to each defendant. Defendants dispute that the information provided, if at all, was  
24 sufficient.

25 **13. DOCUMENT AND WITNESS INFORMATION EXCHANGE:**

26 The Parties will meet and confer to discuss the exchange of documents and witness  
27 information.  
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**14. ADR MECHANISM:**

Over 30 cities have already settled. More are in process. The Plaintiffs are open to ADR. Plaintiffs request that the remaining defendants be ordered to attend mediation, to be completed by January 1, 2012. Defendants, while open to a continued dialogue regarding potential settlement, do oppose a mandatory ADR deadline at this point. Defendants believe further settlement efforts may be more productive following the court's ruling on some of the preliminary issues, such as standing and joinder.

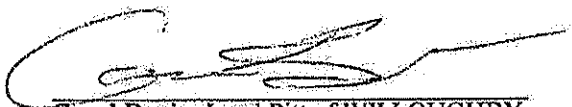
**15. PROPOSED DISCOVERY CUT-OFF:**

Plaintiffs propose a discovery cutoff of April 1, 2012. Defendants oppose plaintiff's suggested discovery cut-off date and believe it is premature to set any discovery deadlines before the case is at issue. Accordingly, defendants request the Court defer setting any such deadline until all challenges to the pleading are resolved.


**16. TRIAL TARGET DATE AND TIME:**

The plaintiffs believe that this matter may be resolved by demurrer, summary judgment or dispositive pretrial motions. Nevertheless, the Plaintiffs propose a target trial date of June 2012. Defendants believe it is premature to propose any target trial date until the issues of venue, jurisdiction, standing and joinder are resolved.

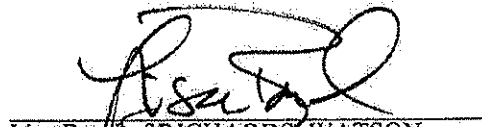
Date: October 7, 2011

  
Conal Doyle, Jared Pitt of WILLOUGHBY DOYLE LLP Counsel for NEW CINGULAR WIRELESS PCS LLC, a Delaware limited liability company

Date: October 7, 2011

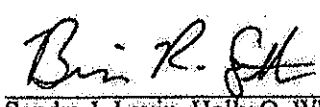
  
Stephen B. Morris of Morris and Associates, Counsel for Settlement Class Plaintiffs

Date: October 7, 2011

  
Lisa Bond of RICHARDS, WATSON, GERSHON for Liaison Defense Counsel

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Date: October 7, 2011



Sandra J. Levin, Holly O. Whatley, Brian R. Guth of COLANTUONO & LEVIN, PC for Liaison Defense Counsel

Date: October \_\_\_\_\_, 2011

Benjamin P. Fay of JARVIS, FAY, DOPORTO & GIBSON, LLP for Liaison Defense Counsel

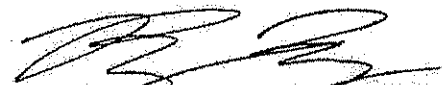


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