

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

IN RE: TRACFONE UNLIMITED
SERVICE PLAN LITIGATION

Case No. 13-cv-03440-EMC

CLASS SETTLEMENT AGREEMENT

Includes the following cases:

Hansell v. TracFone Wireless, Inc., et al.,
Case No. 13-cv-03440-EMC

Gandhi v. TracFone Wireless, Inc., Case
No. 13-cv-05296-EMC

Blaqmoor v. TracFone Wireless, Inc., Case
No. 13-cv-052950-EMC

Browning v. TracFone Wireless, Inc., et al.,
Case No. 14-cv-01347-EMC

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IT IS HEREBY STIPULATED AND AGREED, by, between, and among Plaintiffs David Hansell, Edward Tooley, Christopher Valdez, Mona Gandhi, Marisha Johnston, Marshall Tietje, Martin Blaqmoor, and John Browning (collectively, “Plaintiffs”); and Defendants TracFone Wireless, Inc. (“TracFone”) and Wal-Mart Stores, Inc. (“Wal-Mart”), with all terms as defined below, through their counsel, that the following four related actions are settled and judgment shall be entered on the terms and conditions set forth in this Settlement Agreement, subject to the approval of the Court: *Hansell v. TracFone Wireless, Inc., et al.*, Case No. 13-cv-03440 (N.D. Cal.); *Gandhi v. TracFone Wireless, Inc.*, Case No. 13-cv-05296 (N.D. Cal.); *Blaqmoor v. TracFone Wireless, Inc.*, Case No. 13-cv-05295 (N.D. Cal.); and *Browning v. TracFone Wireless, Inc., et al.*, Case No. 14-cv-01347 (N.D. Cal.). As set forth in this Settlement Agreement, the Parties agree to jointly seek consolidation of the Hansell Action, the Gandhi Action, the Blaqmoor Action, and the Browning Action, under a single caption and under the case number for the first-filed Hansell Action, 13-cv-03440-EMC (N.D. Cal.). Plaintiffs in all four of the Class Action Lawsuits agree to have their respective claims and actions settled through this Settlement Agreement.

I. INTRODUCTION

On July 24, 2013, Plaintiffs David Hansell, Edward Tooley, and Christopher Valdez filed a class action complaint captioned *Hansell v. TracFone Wireless, Inc., et al.*, Case No. 13-cv-03440 (N.D. Cal.), in the United States District Court for the Northern District of California. The Hansell Plaintiffs generally alleged that TracFone and Wal-Mart marketed and sold mobile phone, text, and data service plans through TracFone’s Straight Talk brand and advertised these plans as having unlimited mobile data service, when, according the Hansell Plaintiffs, the service was subject to undisclosed and/or inadequately disclosed limitations. The Hansell Plaintiffs alleged that TracFone’s “advertising and packaging” of its phones, SIM cards, and data plans

tout the unlimited nature of the plans. The Hansell Plaintiffs also alleged that TracFone's commercials, marketing materials, and advertisements feature consumers downloading and using on their Straight Talk smartphones higher-data applications such as those that stream music and video from the Internet. The Hansell Plaintiffs further alleged that TracFone throttles, suspends, and/or terminates its customers' data service when the customers surpass a certain data limit for the month. The Hansell Plaintiffs also alleged that when customers call TracFone, they are either transferred to a high-data usage hotline or, when interacting with a customer service representative, they are not provided a clear answer as to why their data usage was throttled, suspended, or terminated. Based on these and other allegations in their complaint, the Hansell Plaintiffs alleged causes of action for: Breach of Contract, Breach of the Covenant of Good Faith and Fair Dealing, Unjust Enrichment, Violations of the Florida Deceptive and Unfair Trade Practices Act ("FDUTPA"), Violations of California's Unfair Competition Law, Violations of the California Consumer Legal Remedies Act, and Unconscionability.

A. The Hansell Plaintiffs sought to represent a nationwide class of customers who purchased service through TracFone's Straight Talk brand and sought monetary damages and injunctive relief as well as exemplary damages, pre- and post-judgment interest, attorneys' fees, costs and expenses, and any other relief that the Court deemed necessary and proper.

B. On August 15, 2013, another class action was filed by Plaintiff John Browning, originally captioned *Browning v. TracFone Wireless, Inc., et al.*, Case No. 13-cv-22882 (S.D. Fla.), in the United States District Court for the Southern District of Florida. The Browning Plaintiff was represented by different counsel from the counsel representing the Hansell Plaintiffs. The Browning Plaintiff's general allegations were substantially identical to those in the Hansell Action and included several overlapping causes of action, including claims for

violations of the FDUTPA and Unjust Enrichment. In the original complaint in the Browning Action, the Browning Plaintiff sought to represent a class of Florida customers who purchased service through TracFone's Straight Talk brand. The Browning Action was filed against TracFone and Wal-Mart.

C. On November 14, 2013, Plaintiffs Mona Gandhi, Marisha Johnston, and Marshall Tietje filed another class action, captioned *Gandhi v. TracFone Wireless, Inc.*, Case No. 13-cv-05296 (N.D. Cal.), in the United States District Court for the Northern District of California. With the exception of not alleging a claim under the FDUTPA, the general allegations and causes of action asserted by the Gandhi Plaintiffs were substantially identical to those asserted by the Hansell Plaintiffs, but related to TracFone's Net10 brand. The Gandhi Plaintiffs are represented by the same counsel as the Hansell Plaintiffs. The Gandhi Plaintiffs sought to represent a class of California customers who purchased service through TracFone's Net10 brand. Wal-Mart was not named as a defendant in the Gandhi Action.

D. On November 14, 2013, another class action was filed by Plaintiff Martin Blaqmoor, captioned *Blaqmoor v. TracFone Wireless, Inc.*, Case No. 13-cv-05295 (N.D. Cal.), in the United States District Court for the Northern District of California. With the exception of not alleging a claim under the FDUTPA, the general allegations and causes of action asserted by the Blaqmoor Plaintiff were substantially identical to those asserted by the Hansell Plaintiffs, but related to TracFone's Simple Mobile brand. The Blaqmoor Plaintiff is represented by the same counsel as the Hansell Plaintiffs and the Gandhi Plaintiffs. The Blaqmoor Plaintiff sought to represent a nationwide class of customers who purchased service through TracFone's Simple Mobile brand. Wal-Mart was not named as a defendant in the Blaqmoor Action.

E. On November 18, 2013, the Browning Plaintiff filed an amended complaint in the Browning Action, which expanded the scope of the class in that case to a nationwide class of customers who purchased service through four TracFone brands: Straight Talk, Net10, Simple Mobile, and Telcel America. On March 19, 2014, Judge Marcia Cooke of the United States District Court for the Southern District of Florida transferred the Browning Action to the United States District Court for the Northern District of California, where it was captioned as *Browning v. TracFone Wireless, Inc., et al.*, Case No. 14-cv-01347 (N.D. Cal.), and assigned to the docket of the Hon. Edward J. Chen.

F. TracFone and Wal-Mart responded to all four of the Class Action Lawsuits by filing motions to compel arbitration. Defendants' arbitration motions in the Hansell Action, Gandhi Action, and Blaqmoor Action currently remain pending, subject to further briefing which has been stayed. Defendants' arbitration motions in the Browning Action were taken off calendar based on the filing of the Browning Settlement.

G. On December 20, 2013, the Browning Plaintiff and Defendants entered into a settlement agreement in the Browning Action (the "Browning Settlement"). On February 10, 2014, the Browning Plaintiff filed a motion for preliminary approval of the Browning Settlement. Such motion was filed before Judge Marcia Cooke of the United States District Court for the Southern District of Florida, as the Browning Action was pending before Judge Cooke at that time. The initial version of the Browning Settlement was amended multiple times, with the current version being the Second Superseded Settlement Agreement, which was filed in *Browning v. TracFone Wireless, Inc., et al.*, Case No. 14-cv-01347 (N.D. Cal.), on May 30, 2014 (Browning Action Docket No. 104-1). A motion for preliminary approval of the Second Superseded Settlement Agreement in the Browning Action was scheduled to be heard by Judge

Chen on February 12, 2015. In connection with the non-monetary relief provisions of the Browning Settlement, and prior to obtaining any preliminary or final court approval of the Browning Settlement, TracFone represents that it has implemented certain practice changes as set forth at Browning Action Docket No. 103.

H. TracFone and Wal-Mart expressly deny any wrongdoing and do not admit or concede any actual or potential fault, wrongdoing, or liability in connection with any facts or claims that have been alleged against them in any of the Class Action Lawsuits. TracFone and Wal-Mart further deny that the Class Action Lawsuits meet the requisites for certification as a class action under federal law, except as part of a settlement class as described in this Settlement Agreement. Nevertheless, TracFone and Wal-Mart consider it desirable to resolve the Class Action Lawsuits on the terms stated herein, in order to avoid further expense, inconvenience, and interference with their business operations, and to dispose of burdensome litigation. Therefore, TracFone and Wal-Mart have determined that the settlement of the Class Action Lawsuits on the terms set forth herein is in their best interests.

I. This Settlement Agreement reflects a compromise between the Parties, and shall in no event be construed as or deemed an admission or concession by any Party of the truth of any of the pleadings in the Class Action Lawsuits, or of any fault on the part of TracFone and Wal-Mart, and all such allegations or the validity of any purported claim or defense asserted, are expressly denied. Nothing in this Settlement Agreement shall constitute an admission of liability or be used as evidence of liability, by or against any Party hereto.

J. TracFone and Wal-Mart have produced relevant documents, including electronically stored information, to Class Counsel. Class Counsel have thoroughly reviewed the produced materials. In particular, TracFone and Wal-Mart have produced extensive

documentation regarding marketing, advertising, sales, and pricing data for TracFone's brands' unlimited service plans. In total, Class Counsel was given access to more than 400,000 pages of documents. In addition, prior to entering into this Settlement Agreement, Class Counsel conducted depositions of four senior TracFone employees regarding issues relating to the Class Action Lawsuits. In sum, before entering into this Settlement Agreement, Class Counsel conducted a thorough examination and evaluation of the relevant law, facts, and allegations to assess the merits of the claims and could reasonably assess the strength of Plaintiffs' claims and TracFone and Wal-Mart's liability, including their defenses.

K. Based upon their review, investigation, and evaluation of the facts and law relating to the matters alleged in the pleadings, Plaintiffs in the Class Action Lawsuits and Class Counsel, on behalf of the proposed Class, have agreed to settle the Class Action Lawsuits pursuant to the provisions of this Settlement Agreement, after considering, among other things: (1) the substantial benefits to the Class Members under the terms of this Settlement Agreement; (2) the risks, costs, and uncertainty of protracted litigation, especially in complex actions such as this, as well as the difficulties and delays inherent in such litigation; and (3) the desirability of consummating this Settlement Agreement promptly in order to provide expeditious and effective relief to the Class Members.

L. In related litigation, TracFone has entered into an agreement with the Federal Trade Commission to settle a claim that TracFone participated in deceptive acts or practices in violation of Section 5 of the FTC Act, 15 U.S.C. § 45, in connection with the advertising of "unlimited" mobile data plans. *See FTC v. TracFone*, No. --- (N.D. Cal. filed ----) (the "FTC Agreement"). In conjunction with this Settlement Agreement and the FTC Agreement, TracFone has agreed to pay \$40 million to create a Settlement Fund. The Settlement Fund will be used to

administer any consumer redress, including the reasonable expenses of the Settlement Administrator and any other third party used to administer consumer redress, that is ordered to be paid pursuant to this Settlement Agreement.

II. DEFINITIONS

A. As used in this Settlement Agreement, including the exhibits attached hereto (which are an integral part of this Settlement Agreement and are incorporated in their entirety by reference), the following terms have the following meanings, unless this Settlement Agreement specifically provides otherwise:

1. “Administrative Costs” means and includes: the reasonable costs and expenses of the Settlement Administrator (and any persons or entities they retain to assist them consistent with the terms of this Settlement Agreement, including in connection with the publication and Internet/media notice program) associated with disseminating notice to the Class, implementing the Claim Process, and carrying out any other responsibilities consistent with the terms of this Settlement Agreement. Administrative Costs does not include other fees, costs, or expenses, including attorney fees, litigation expenses, court costs, service awards to Plaintiffs, or costs or expenses incurred by Defendants, including those incurred in connection with providing information to the Settlement Administrator, implementing the Additional Internet-Based Notice, disseminating SMS Notice, or providing information to the Settlement Administrator for its use in implementing other forms of notice to the Class.

2. “Affected TracFone Account” means a particular telephone number used for a Straight Talk, Net10, Simple Mobile, or Telcel America wireless service plan with “unlimited” data that, at any time during the Class Period, at TracFone’s request, had the data usage Throttled, Suspended, or had all Services Terminated prior to the expiration of the service plan.

3. “Attorneys’ Fees and Expenses” means such funds as may be awarded by the Court to Class Counsel from Defendants to compensate all Plaintiffs’ Counsel for their fees and expenses in connection with the Class Action Lawsuits and the Settlement, as described in Section IX of this Settlement Agreement.

4. “Blaqmoor Action” means the lawsuit styled *Blaqmoor v. TracFone Wireless, Inc.*, Case No. 13-cv-05295 (N.D. Cal.).

5. “Blaqmoor Plaintiff” means Martin Blaqmoor.

6. “Browning Action” means the lawsuit styled *Browning v. TracFone Wireless, Inc., et al.*, Case No. 14-cv-01347 (N.D. Cal.).

7. “Browning Plaintiff” means John Browning.

8. “Browning Settlement” means the settlement agreement agreed to between the Browning Plaintiff and Defendants, with the current version being the Second Superseded Settlement Agreement (Browning Action Docket No. 103), the motion for preliminary approval of which was scheduled to be heard by Judge Chen on February 12, 2015.

9. “Claim” means the claim of a Class Member or his or her representative submitted in compliance with the procedure provided in the Settlement, as described in Section IV.B of this Settlement Agreement.

10. “Claimant” means a Settlement Class Member who submits a Claim.

11. “Claim Deadline” means ninety (90) days following the Notice Date.

12. “Claim Form” means the document substantially in the form attached as Exhibit 1 to this Settlement Agreement.

13. “Claim Process” means the process for submitting and reviewing Claims as described in Section IV.B of this Settlement Agreement.

14. “Class” means: All persons who purchased, in the United States, a Straight Talk, Net10, Simple Mobile, or Telcel America wireless service plan with “unlimited” data, who, at any time during the Class Period, at TracFone’s request, had their data usage Throttled, Suspended, or had all of their Services Terminated prior to the expiration of their service plan. Defendants are excluded from the Class as well as any entity in which either of the Defendants has a controlling interest, along with Defendants’ legal representatives, officers, directors, assignees, and successors. Also excluded from the Class is any judge to whom the Class Action Lawsuits are assigned, together with any relative of such judge and the spouse of any such persons.

15. “Class Action Lawsuits” collectively refers to the Blaqmoor Action, the Browning Action, the Gandhi Action, and the Hansell Action.

16. “Class Counsel” means: Michael W. Sobol of Lieff, Cabraser, Heimann & Bernstein, LLP, 275 Battery Street 29th Floor, San Francisco, California 94111; Daniel M. Hattis of Hattis Law, 2300 Geng Road, Suite 200, Palo Alto, California 94303; and John A. Yanchunis, Sr. and J. Andrew Meyer of Morgan & Morgan Complex Litigation Group, 201 N. Franklin Street, 7th Floor, Tampa, Florida, 33602.

17. “Class Member” means any person falling within the Class definition.

18. “Class Notice” means a notice substantially in the form attached as Exhibit 2 to this Settlement Agreement.

19. “Class Period” means July 24, 2009, through December 31, 2014.

20. “Clear, Prominent, and Adjoining” disclosure means the following:

a. For the disclosures required by subsection IV.C.1.b.i.1 of this Settlement Agreement, the required disclosures shall be in a font no smaller than 50% of the

font size used for the word “unlimited,” and shall be presented in reasonably close proximity to (*i.e.*, next to, above, or below) the word “unlimited.”

b. For the disclosures required by subsection IV.C.1.b.i.2 of this Settlement Agreement, the required disclosures shall be in a font no smaller than 45% of the font size used for the word “unlimited,” and shall be presented in reasonably close proximity to (*i.e.*, next to, above, or below) the word “unlimited.”

c. For the disclosures required by subsection IV.C.1.b.i.3 of this Settlement Agreement, the required disclosures shall be presented on the same page as the word “unlimited,” or if, due to space limitations, not presented on the same page as the word “unlimited,” there shall be an asterisk or other prominent reference marker immediately next to the word “unlimited” directing customers’ attention to such disclosures located elsewhere on the materials (*e.g.*, on the reverse side of a Plan Card or the inside flap of a phone box cover). Any asterisk or other reference marker so used shall be of a font size larger than the word “unlimited” to which it relates so as to be more easily noticeable by consumers.

21. “Clear and Conspicuous” and “Clearly and Conspicuously” means as follows:

a. In print communications, the disclosure must be presented in a manner that stands out from the accompanying text so that it is sufficiently prominent, because of its type size, contrast, location, or other characteristics, for an ordinary consumer to notice, read, and comprehend it;

b. In communications made through an electronic medium (such as television, video, radio, and interactive media such as the Internet, online services, and software), the disclosure must be presented simultaneously in both the audio and visual portions

of the communication. In any communication presented solely through visual or audio means, the disclosure must be made through the same means through which the communication is presented. In any communication disseminated by means of an interactive electronic medium such as software, the Internet, or online services, the disclosure must be unavoidable. Any audio disclosure must be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it. Any visual disclosure must be presented in a manner that stands out in the context in which it is presented so that it is sufficiently prominent, due to its size and shade, contrast to the background against which it appears, the length of time it appears on the screen, and its location, for an ordinary consumer to notice, read, and comprehend it; and

c. Regardless of the medium used to disseminate it, the disclosure must be in understandable language and syntax. Nothing contrary to, inconsistent with, or in mitigation of the disclosure may be used in any communication.

22. “Close Proximity” means on the same print page, webpage, online service page, or other electronic page, and proximate to the triggering representation, and not accessed or displayed through hyperlinks, pop-ups, interstitials, or other means.

23. “Court” means the United States District Court for the Northern District of California.

24. “Customer Data” means the best data and information available to TracFone regarding Affected TracFone Accounts, to be provided by TracFone to the Settlement Administrator for the Settlement Administrator’s use in disseminating notice and processing Claims. The Customer Data shall include all information available to TracFone regarding the Throttling, Suspension, and Services Terminated that occurred, and the timing thereof, for each Affected TracFone Account during the Class Period, as well as any contact information that

TracFone has in its records for each Affected TracFone Account, including customer name(s), last known mailing address(es), and email address(es).

25. “Defendants” collectively refers to TracFone and Wal-Mart.

26. “Defendants’ Counsel” means Steven J. Brodie of Carlton Fields Jordan Burt, P.A., Miami Tower, 100 S.E. Second Street, Suite 4200, Miami, Florida 33131; and Joel S. Feldman of Sidley Austin LLP, One South Dearborn Street, Chicago, Illinois 60603.

27. “Email Summary Notice” means the summary notice substantially in the form attached as Exhibit 8 to this Settlement Agreement.

28. “Fairness Hearing” means the hearing at or after which the Court shall make a final decision regarding whether to finally approve this Settlement Agreement as fair, reasonable, and adequate.

29. “Final Order” and “Final Judgment” mean the Court’s orders, substantially in the forms attached to this Settlement Agreement as Exhibits 3 and 4, respectively, finally approving the Settlement and this Settlement Agreement, as described in Section X.B of this Settlement Agreement.

30. “Final Settlement Date” means the date on which the Final Order and Final Judgment approving this Settlement Agreement become final, and shall be the next business day after all of the following have occurred:

- a. This Settlement Agreement is fully executed by all signatories;
- b. The Court enters the Final Order and Final Judgment; and
- c. Either:

(i) the time to appeal from the Final Order and Final Judgment pursuant to Federal Rule of Appellate Procedure 4 has expired and no such appeal has been taken; or

(ii) if any timely appeal has been taken from the Final Order and Final Judgment, all appeals therefrom, including petitions for rehearing or reargument pursuant to Federal Rule of Appellate Procedure 40, petitions for rehearing *en banc* pursuant to Federal Rule of Appellate Procedure 35, and petitions for certiorari pursuant to Rule 13 of the Rules of the Supreme Court or any other form of review, have been finally disposed of in a manner that affirms the Final Order and Final Judgment.

31. “FTC Agreement” means the Stipulated Order for Permanent Injunction and Monetary Judgment, approved by a majority vote of the Commissioners of the FTC. *See FTC v. TracFone*, No. --- (N.D. Cal. filed ----).

32. “Gandhi Action” means the lawsuit styled *Gandhi v. TracFone Wireless, Inc.*, Case No. 13-cv-05296 (N.D. Cal.).

33. “Gandhi Plaintiffs” means Mona Gandhi, Marisha Johnston, and Marshall Tietje.

34. “Hansell Action” means the lawsuit styled *Hansell v. TracFone Wireless, Inc., et al.*, Case No. 13-cv-03440 (N.D. Cal.).

35. “Hansell Plaintiffs” means David Hansell, Edward Tooley, and Christopher Valdez.

36. “Identified Class Member” means any person that can be identified from TracFone’s records as being a Class Member and for whom TracFone has a mailing address, as indicated in the Customer Data.

37. “Mobile Data” means mobile wireless broadband Internet access service to mobile devices such as smartphones.

38. “Mobile Data Plan” means a contract with TracFone for the provision of Mobile Data.

39. “Net Distributable Funds” means the Settlement Fund minus Administrative Costs.

40. “Notice Date” means thirty (30) days following the entry of the Preliminary Approval Order.

41. “Parties” means Plaintiffs and Defendants, collectively, as each of those terms is defined in this Settlement Agreement.

42. “Payment Date” means the date by which monetary relief (not including any re-mailed or re-issued payments, or any second distribution of residual amounts) is to be distributed to Valid Claimants pursuant to Section IV of this Settlement Agreement. The Payment Date shall be sixty (60) days following the Final Settlement Date, provided that the Payment Date may occur sooner only if all of the following conditions are met: (a) the Court has entered the Final Order and Final Judgment; (b) the Claim Deadline has occurred and sixty (60) days from the Claim Deadline have passed; (c) Class Counsel and Defendants agree in writing that the distribution of monetary relief to Valid Claimants, pursuant to the terms of Section IV of this Settlement Agreement, may commence.

43. “Plaintiffs” means and includes David Hansell, Edward Tooley, Christopher Valdez, Mona Gandhi, Marisha Johnston, Marshall Tietje, Martin Blaqmoor, and John Browning.

44. “Plan Cards” means cards that are sold that can be redeemed for access to an unlimited service plan of one or more of TracFone’s brands.

45. “Preliminary Approval Order” means the order to be entered by the Court preliminarily approving the Settlement as outlined in Section X.A of this Settlement Agreement, and that is substantially in the form attached as Exhibit 5 to this Settlement Agreement.

46. “Release” means the release and waiver set forth in Section VIII of this Settlement Agreement.

47. “Released Parties” means TracFone and Wal-Mart and each of their respective present and former parents, subsidiaries, divisions, affiliates, predecessors, successors, assigns, and insurers, including all of their insurers’ affiliates, predecessors, successors, assigns and reinsurers, and the respective agents, servants, attorneys, employees, officers, directors, shareholders and representatives of the foregoing, and each of them and all of the present and former directors, officers, employees, agents, attorneys, and shareholders of TracFone and Wal-Mart and each of their present and former parents, subsidiaries, divisions, affiliates, predecessors, successors, and assigns. This also includes Simple Mobile, LLC (“Simple Mobile”) for the periods both before and after TracFone purchased the assets of Simple Mobile on or about June 18, 2012.

48. “Releasing Parties” means Plaintiffs and the Settlement Class Members, including, only to the extent they may have a right to a claim on behalf of a Plaintiff or a Settlement Class Member, each of their respective spouses, executors, representatives, heirs, predecessors, successors, bankruptcy trustees, guardians, wards, joint tenants, tenants in common, tenants by the entirety, co-borrowers, agents, attorneys and assigns, and all others of those who claim through them or who assert claims on their behalf; and, with respect to any business entities, members, officers, directors, shareholders, employees, independent contractors,

agents, successors, assigns, representatives, and all other persons acting or purporting to act on behalf of such business entity.

49. “Service Termination” or “Services Terminated” means suspending access to data, voice, and SMS to unlimited service plan customers prior to the expiration of such service term.

50. “Settlement” or “Settlement Agreement” means this Settlement Agreement, including the exhibits attached hereto.

51. “Settlement Administrator” means Analytics LLC, subject to Court approval.

52. “Settlement Class Member” means any Class Member who does not timely and validly exclude themselves from the Class pursuant to the procedure set forth in Section VI of this Settlement Agreement.

53. “Settlement Fund” means Forty Million Dollars (\$40,000,000.00), which TracFone has agreed to pay in conjunction with the FTC Agreement and this Settlement Agreement.

54. “SMS Notice” means the notice substantially in the form attached as Exhibit 7 to this Settlement Agreement.

55. “Summary Settlement Notice” means the summary notice substantially in the form attached as Exhibit 6 to this Settlement Agreement.

56. “Suspension” or “Suspended” means suspending access to the data portion of service to unlimited service plan customers prior to the expiration of such service term.

57. “Throttling” or “Throttled” means slowing down the data speed for the data portion of service to unlimited service plan customers prior to the expiration of such service term.

58. “TracFone” means TracFone Wireless, Inc. and shall refer to and include TracFone branded service offered through the following brand names: (a) Straight Talk; (b) Net10; (c) Telcel America; and (d) Simple Mobile, for the periods both before and after TracFone purchased the assets of Simple Mobile on or about June 18, 2012.

59. “Valid Claimant(s)” means and includes all Settlement Class Members who: (a) submit one or more timely and valid Claim(s), as determined by the Settlement Administrator; and/or (b) are an Identified Class Member.

60. “Binding Term Sheet” means that certain document titled Binding Term Sheet entered into, through their respective counsel, on or about December 30, 2014 by the Plaintiffs, on the one hand, and Defendants, on the other hand.

61. “Wal-Mart” means Wal-Mart Stores, Inc.

B. Other capitalized terms used in this Settlement Agreement but not defined in this Section shall have the meanings ascribed to them elsewhere in this Settlement Agreement.

C. The terms “he or she” and “his or her” include “it” or “its” where applicable.

III. CERTIFICATION OF THE SETTLEMENT CLASS

A. Defendants, while continuing to deny that the Class Action Lawsuits meet the requisites for class certification under Fed. R. Civ. P. 23 for any purpose other than settlement, hereby consent, solely for purposes and in consideration of the Settlement set forth herein, to the certification of the Class, to the appointment of Class Counsel, and to the conditional approval of the Plaintiffs as suitable representatives of the Class.

B. The certification of the Class, the appointment of the Plaintiffs as class representatives, and the appointment of Class Counsel shall be binding only with respect to this Settlement and this Settlement Agreement. If the Court fails to approve this Settlement Agreement and the Settlement proposed herein for any reason, or if this Settlement Agreement and the Settlement proposed herein is terminated, canceled, or fails to become effective for any reason whatsoever, this class certification, to which the Parties have stipulated solely for the purposes and in consideration of the Settlement set forth herein, this Settlement Agreement, and all the provisions of the Preliminary Approval Order, shall be vacated by their own terms, and the litigation of the Class Action Lawsuits shall revert to their status with respect to class certification as such status existed prior to the date of this Settlement Agreement. In that event, Defendants shall retain all rights they had immediately preceding the execution of this Settlement Agreement to object to the maintenance of the Class Action Lawsuits as a class action, and in that event, nothing in this Settlement Agreement or other papers or proceedings related to the Settlement shall be used as evidence or argument by any party concerning whether the Class Action Lawsuits may properly be maintained as a class action under applicable law.

IV. SETTLEMENT RELIEF

A. Settlement relief to the Class shall consist of two primary components: (1) monetary payments to Valid Claimants; and (2) conduct changes implemented by TracFone, as set forth herein.

B. Monetary Relief.

1. Settlement Fund.

a. TracFone will pay the Settlement Fund to the FTC in accordance with the timing and procedures set forth in the FTC Agreement. The Settlement Fund will be

jointly administered as provided under the FTC Agreement and pursuant to this Settlement Agreement.

b. The Settlement Fund is to be used for: (a) providing compensation to Settlement Class Members who are Valid Claimants; and (b) for payment of all Administrative Costs.

c. Payment of Administrative Costs from the Settlement Fund shall be subject to approval by Class Counsel. The Settlement Administrator shall provide a copy of invoices to Class Counsel and the FTC on a monthly basis. If Class Counsel objects to any charges on the invoices, Class Counsel and the Settlement Administrator may, after good-faith efforts to resolve any objections, seek review by the Court of the reasonableness of the Settlement Administrator's charges.

d. This Section shall not affect TracFone's obligation to separately pay any Attorneys' Fees and Costs or Plaintiff service awards that are awarded by the Court consistent with Section IX of this Settlement Agreement. However, the \$40,000,000 Settlement Fund, plus Attorneys' Fees and Costs and Plaintiff service awards awarded by the Court consistent with Section IX of this Settlement Agreement, shall constitute the entire financial obligation of TracFone under the terms of the Settlement Agreement.

e. Wal-Mart shall not have an independent obligation to pay any part of the Settlement Fund; Attorneys' Fees and Costs; and Plaintiff service awards.

2. Net Distributable Funds. The Net Distributable Funds shall be distributed to Valid Claimants, pursuant to the terms, including the terms regarding the disbursement of residual funds, set forth in this Settlement Agreement.

3. Claim Form Submission and Review; Entitlement to Payment.

a. Settlement Class Members may submit Claim(s), in accordance with the Claim Process, up until and through the Claim Deadline, and the Settlement Administrator shall review and process Claims.

b. By no later than seven (7) days following the execution of this Settlement Agreement, TracFone shall provide the Customer Data to the Settlement Administrator, for the Settlement Administrator's use in disseminating notice and processing Claims.

c. Settlement Class Members who submit timely and valid Claims, as determined by the Settlement Administrator, shall be Valid Claimants and shall be eligible for monetary relief as provided in this Settlement Agreement. Settlement Class Members with multiple Affected TracFone Accounts may make a Claim for each one of their Affected TracFone Accounts, and shall be eligible for monetary relief as provided in this Settlement Agreement for each of their Affected TracFone Account(s) for which they submit a timely and valid Claim.

d. Identified Class Members, whether or not they submit a timely and valid Claim, shall be Valid Claimants and shall be eligible for monetary relief as provided in this Settlement Agreement, for each Affected TracFone Account identified from TracFone's records as belonging to them, as indicated in the Customer Data.

e. The Claim Form shall advise Class Members that, upon request and under certain circumstances, the Settlement Administrator has the authority to request additional information and/or documentation to verify Claims, and has the authority to reject Claims that it ultimately deems to be invalid.

f. The Settlement Administrator shall conduct reasonable audit(s) to ensure the integrity of the Claim Process, including that appropriate controls are in place to prevent fraud.

g. Beginning not later than two weeks after the entry of the Preliminary Approval Order and continuing until the processing of Claims is completed, the Settlement Administrator shall provide biweekly updates to Class Counsel, the FTC, and Defendants' Counsel regarding Claim submissions and regarding its review and processing of Claims.

4. Calculation of Payment Amounts and Creation of Final Valid Claimant List.

a. For purposes of calculating the payment amounts for Valid Claimants, based on the information provided by the Valid Claimants and as can best be determined through the Customer Data available for verification, the Settlement Administrator shall assign each Affected TracFone Account for which a Valid Claimant is eligible for monetary relief under this Settlement Agreement into one of the following "Categories":

- Category 1: Class Members who purchased a Straight Talk, Net10, Simple Mobile or Telcel America brand wireless service plan with "unlimited" data and whose data services were Throttled at TracFone's request between October 28, 2013 and December 31, 2014.
- Category 2: Class Members who purchased a Straight Talk, Net10, Simple Mobile or Telcel America brand wireless service plan with "unlimited" data and whose data services were Throttled at TracFone's request between July 24, 2009 and October 27, 2013.

- Category 3: Class Members who purchased a Straight Talk, Net10, Simple Mobile or Telcel America brand wireless service plan with “unlimited” data and whose data services were Suspended at TracFone’s request during the Class Period.
- Category 4: Class Members who purchased a Straight Talk, Net10, Simple Mobile or Telcel America brand wireless service plan with “unlimited” data and who had all of their Services Terminated at TracFone’s request during the Class Period.

b. If a Valid Claimant is determined by the Settlement Administrator as falling within multiple Categories with respect to a particular Affected TracFone Account for which they are eligible for monetary relief under this Settlement Agreement, the highest number Category shall apply for purposes of calculating his or her payment amount for that Affected TracFone Account (i.e., Category 2 is “higher” than Category 1; Category 3 is “higher” than Categories 1 and 2; Category 4 is the “highest” Category). For Valid Claimants who, pursuant to this Settlement Agreement, are eligible for monetary relief for multiple Affected TracFone Accounts, the Settlement Administrator shall assign a Category for each such Affected TracFone Account.

c. Reference Chart for Determining Payment Amounts for Valid Claimants (“Reference Chart”):

Category	Initial Amount	Maximum Amount
Category 1	\$2.15-\$2.50	\$45.00
Category 2	\$6.50	\$45.00
Category 3	\$10.00	\$45.00

Category 4	\$65.00	\$65.00
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d. Payments shall be made to Valid Claimants, from the Net Distributable Funds and as set forth further herein, in the following amounts based on the applicable Category designation(s), for each Affected TracFone Account for which they are eligible for monetary relief under this Settlement Agreement:

(i) The Initial Amounts listed in the Reference Chart; or

(ii) If the total aggregate amount of payments to Valid Claimants, as calculated using the Initial Amounts in the Reference Chart, is less than the total amount of Net Distributable Funds, additional amounts will first be applied to Category 1 until said payment is equal to the payment under Category 2. Thereafter, the payment amounts to each of the four Categories will be increased on a *pro-rata* basis up to the Maximum Amounts in the Reference Chart.

e. By no later than fourteen (14) days before the Payment Date, the Settlement Administrator, using the Customer Data and the timely and valid Claims submitted by Settlement Class Members, shall create and provide to Class Counsel and Defendants' Counsel a complete and final list of Valid Claimants ("Final Valid Claimant List"), that includes for each Valid Claimant the following information: (a) their name; (b) the number of Affected TracFone Account(s) for which they are entitled to monetary relief under this Settlement Agreement; (c) their "Category" designation for each Affected TracFone Account for which they are entitled to monetary relief under this Settlement Agreement; (d) their *total* payment amount as calculated pursuant to this Section of the Settlement Agreement (*i.e.*, for all Affected TracFone Account(s) for which the Valid Claimant is entitled to monetary relief under this Settlement Agreement) ("Settlement Payment Amount"); and (e) whether or not they

submitted a timely and valid Claim. Defendants' Counsel, Defendants, and Class Counsel shall take appropriate steps to safeguard the Final Valid Claimant List and shall not use the Final Valid Claimant List for any purpose other than the implementation of this Settlement.

5. Distribution of Payments to Valid Claimants

a. For all Valid Claimants, their payments shall be made by mailed check. By no later than the Payment Date, the Settlement Administrator shall mail checks to the Valid Claimants, drawn from the Settlement Fund in the Settlement Payment Amounts indicated for them in the Final Valid Claimant List. For Valid Claimants who submitted timely and valid Claims, their payment checks shall be sent to the mailing address indicated in their Claim Forms. For other Valid Claimants, their payment checks shall be mailed to the addresses indicated in the Customer Data, as updated by the Settlement Administrator through the National Change of Address Database. The initial mailed checks to Valid Claimants shall be valid for a period of one-hundred-twenty (120) days.

b. For any payment checks that are returned undeliverable with forwarding address information, the Settlement Administrator shall re-mail the check to the new address indicated. For any payment checks that are returned undeliverable without forwarding address information, the Settlement Administrator shall make reasonable efforts to identify updated address information and re-mail checks to the extent an updated address is identified.

6. Residual Funds: Any amounts remaining in the Settlement Fund one (1) year after the Payment Date, including, but not limited to, un-cashed distributions made payable to Valid Claimants, shall be distributed as follows:

a. To the extent feasible and practical in light of the amount of the residual funds remaining and the costs of administering such second distribution, and subject to

agreement by Class Counsel and Defendants after consultation with the FTC, the residual funds will be distributed, by mailed check drawn from the Settlement Fund, to those Valid Claimants who negotiated their initial payment checks. The payment amounts for such second distribution shall be separately calculated on a *pro rata* basis, up to the Maximum Amounts in the Reference Chart for each Affected TracFone Account for which payment was negotiated in the initial distribution; or

b. If Class Counsel and Defendants agree that a second distribution is not feasible or practical, or if a second distribution is made pursuant to Section IV.B.6.a above and there are funds remaining in the Settlement Fund following such second distribution, the FTC shall have sole discretion to direct the use of any such funds as provided in the FTC Agreement.

c. No later than one (1) year plus thirty (30) days after the Payment Date, the Settlement Administrator shall provide a report (the “Residual Funds Report”) to Class Counsel, Defendants’ Counsel, and the FTC that indicates: the total amount of residual funds remaining in the Settlement Fund, the number of Valid Claimants who negotiated their initial payment checks (broken down by Category), the number of Valid Claimants who did not negotiate their initial payment checks (broken down by Category), the payment amount for each Category in the initial distribution, and any further information requested by Class Counsel, Defendants’ Counsel, or the FTC regarding the initial distribution or the residual funds. Within thirty (30) days of receiving the Residual Funds Report, Class Counsel and Defendants’ Counsel, after consultation with the FTC, shall notify the Settlement Administrator of their decision regarding the distribution of residual funds (i.e., regarding whether a second distribution will occur). If Class Counsel and Defendants are unable to agree on the distribution

of the residual funds, they shall bring the matter, together with supporting materials and argument, to the Court for a determination.

d. If a second distribution is made pursuant to Section IV.B.6.a above, all Administrative Costs associated with administering the second distribution shall be paid from the Settlement Fund.

e. None of the Settlement Fund shall revert to Defendants.

C. Conduct Changes.

1. In addition to the monetary relief set forth above, TracFone will implement the following conduct changes:

a. TracFone agrees not to, expressly or by implication: (a) make a representation about the amount of Mobile Data, including that the Mobile Data is unlimited, without disclosing Clearly and Conspicuously, and in Close Proximity to the representation, all material restrictions on the amount and speed of the Mobile Data; or (b) misrepresent the performance or central characteristics of a Mobile Data Plan.

b. TracFone agrees that, for a period of no less than three (3) years from the date of this Settlement Agreement:

(i) TracFone's marketing and promotional materials regarding TracFone and TracFone's brands' service plans, phones, SIM cards, and/or other products shall not refer to any TracFone or TracFone brand service plan (including, but not limited to Straight Talk, Net10, Simple Mobile, and Telcel America brand service plans) as providing access to "unlimited" data unless there is also in such marketing and promotional materials, a Clear, Prominent, and Adjoining Disclosure of the following:

1) any applicable throttling caps or limits;

2) the lower speed(s) to which customers will be throttled or slowed (*e.g.*, 64–128 kbps); and

3) any applicable caps, limits, or other terms regarding data usage Suspension and/or Services Terminated.

(ii) In the Terms and Conditions describing the data features of any unlimited data plan, there shall appear a statement in substantially the following form appearing proximate to the description of the data throttle limits and throttled data speeds: If your data speed is reduced, the reduced speed may impact the functionality of some data applications, such as streaming audio or video or web browsing.

(iii) Notwithstanding the foregoing: (i) nothing herein shall be deemed to require TracFone to disclose all such other additional terms and conditions of service which are otherwise contained in TracFone’s Terms and Conditions of Service; (ii) in light of the fact that TracFone Straight Talk plans change frequently and that other TracFone brands offer various plans that include different amounts of high speed data, the disclosures required by this Section for Plan Cards and phone and SIM card packaging may state only that the data plans contain a “fixed amount of high speed data” or words of similar import, provided there are adjacent and prominent point of purchase advertising materials also containing the disclosures required by Sections IV.C.1.b.i.1 & 2 herein that indicate the then-current high speed data limit and the throttled speeds; and (iii) due to space limitations, marketing texts and third party website display ads and banners need not contain the disclosures required by Sections IV.C.1.b.i.1-3 herein.

(iv) The Parties understand and acknowledge that TracFone does not control directly, or sometimes at all, the entire distribution channel for its

products and services. TracFone will use commercially reasonable efforts to transition its marketing and promotional materials for its unlimited data plans expeditiously and in good faith pursuant to the spirit and intent of this Settlement Agreement. By no later than February 5, 2015, TracFone shall provide Class Counsel with a detailed proposed plan for compliance for Wal-Mart and its top 7 other third party retailers (“Top 8 Retailers”). This will include target dates for changes. It is understood that it could take up to six months to complete the above-referenced rollout to the Top 8 Retailers and replace the prior marketing materials and products with new marketing materials and products. It is further understood that there are smaller independent aggregators and retailers, many of whom TracFone does not have a direct relationship with that may still have in commerce the old marketing materials and products and that these materials and products cannot practically be removed from commerce. For aggregators and retailers other than the Top 8 Retailers, TracFone shall take reasonable steps to request that these entities use the new marketing and promotional materials and products as soon as feasible, including, as reasonable, giving such instructions to TracFone’s distributors and aggregators who have direct relationships with smaller independent retailers.

(v) TracFone shall adopt, by no later than January 29, 2015, and maintain appropriate measures to ensure that its customer service representatives, including without limitation those serving customers via telephone, TracFone community forums, and TracFone’s Facebook pages, are properly trained, if asked, to provide customers with clear and accurate statements of TracFone’s Throttling, Suspension, and Services Terminated policies for any “unlimited” data service plans, including but not limited to regarding any applicable throttling caps or limits, throttled speeds, and that throttled speeds may impact the functionality of data services. In order to provide the best possible and most consistent service to

those with questions about the functionality of data service where their speeds are throttled, the requirements of this Section IV.C.1.b.v may be met by transferring the caller to a prerecorded message that provides the information required by this paragraph.

(vi) With respect to the production and release of radio and television commercials, TracFone shall adhere to the requirements set forth in the FTC Agreement.

c. TracFone further represents that it has already made the following changes, which changes shall be required under this Settlement Agreement and shall last for a period of no less than three (3) years from the date of this Settlement Agreement: (1) TracFone has modified its Terms and Conditions of Service to suggest that all customers should use Wi-Fi wherever possible when using data services, as the use of Wi-Fi does not count against data allotments; (2) TracFone has modified its activation instructions to again remind customers to review the Terms and Conditions of Service prior to activating their handset; (3) TracFone has taken steps to advise customers of free third-party services, such as cell phone “apps” through which customers can track their data usage; and (4) TracFone has implemented a system by which it will advise customers by SMS message when their data speed has been throttled upon reaching the specified data usage levels.

d. The conduct changes agreed to herein are intended to satisfy TracFone’s disclosure obligations to the Class under this Settlement Agreement, and do not alter TracFone’s obligations set forth in the FTC Agreement.

V. NOTICE TO THE CLASS

A. Duties of the Settlement Administrator.

1. The Settlement Administrator shall be responsible for, without limitation, consulting and helping the Parties design and implement the notice to the Class via various forms

of media, including implementing media purchases. In particular, this includes: (a) arranging for the publication of the Summary Settlement Notice; (b) helping to design and implementing notice to the Class by various electronic media, including social media and electronic publications; (c) disseminating press releases; and (d) responding to requests from Class Counsel, the FTC and/or Defendants' Counsel.

2. The Settlement Administrator shall also be responsible for, without limitation, dissemination of the Summary Settlement Notice by mail, dissemination of the Email Summary Notice by email, and implementing the terms of the Claim Process and related administrative activities that include communications with Class Members concerning the Settlement, Claim Process, and their options thereunder. In particular, the Settlement Administrator shall be responsible for: (a) printing, mailing or arranging for the mailing of the Summary Settlement Notice; (b) emailing or arranging for the emailing of the Email Summary Notice; (c) handling returned mail not delivered to Class Members; (c) attempting to obtain updated address information for any Summary Settlement Notice returned without a forwarding address; (d) making any additional mailings required under the terms of this Settlement Agreement; (e) establishing a Settlement Website that contains the Class Notice and the Claim Form that can be completed and submitted on-line; (f) establishing a toll-free telephone number with message and live operator capabilities to which Class Members may refer for information about the Class Action Lawsuits and the Settlement; (g) receiving and maintaining on behalf of the Court and the Parties any Class Member correspondence regarding requests for exclusion and objections to the Settlement; (h) forwarding inquiries from Class Members to Class Counsel or their designee for a response, if warranted; (i) establishing a post office box for the receipt of Claim Forms, exclusion requests, objections, and any other correspondence; (j) reviewing and

verifying Claim Forms; (k) calculating payment amounts for Valid Claimants pursuant to the terms of this Settlement Agreement; (l) mailing and re-mailing payments to Valid Claimants pursuant to the terms of this Settlement Agreement; and (m) otherwise implementing and/or assisting with the claim review and payment process.

3. If the Settlement Administrator makes a material or fraudulent misrepresentation to, or conceals requested material information from, Class Counsel, Defendants, or Defendants' Counsel, then the Party from whom information was withheld or to whom the misrepresentation is made shall, in addition to any other appropriate relief, and subject to approval by the Court and agreement among the Parties regarding a replacement Settlement Administrator and approval by the Court of such replacement Settlement Administrator, have the right to demand that the Settlement Administrator be replaced. If the Settlement Administrator fails to perform adequately on behalf of Defendants or the Class or Class Counsel, subject to the approval by the Court and agreement among the Parties regarding a replacement Settlement Administrator and approval by the Court of such replacement Settlement Administrator, the Parties may agree to remove the Settlement Administrator. The Parties also acknowledge that, as this Settlement is being jointly administered with the FTC Agreement, the FTC shall be consulted regarding any request by a Party that the Settlement Administrator be replaced, and shall also be consulted regarding the selection of any replacement Settlement Administrator. The Parties shall not unreasonably withhold consent to remove the Settlement Administrator. Defendants and Class Counsel shall attempt to resolve any disputes regarding the retention or dismissal of the Settlement Administrator in good faith, and, if they are unable to do so, shall refer the matter to the Court for resolution.

4. The Settlement Administrator may retain one or more persons to assist in the completion of its responsibilities under this Settlement Agreement.

5. Not later than forty-five (45) days before the date of the Fairness Hearing, the Settlement Administrator shall file with the Court declaration(s) detailing the scope, methods, and results of the notice program.

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

B. CAFA Notice.

1. Within the time prescribed by 28 U.S.C. § 1715, Defendants shall provide notice of this Settlement to the appropriate federal and state officials in compliance with 28 U.S.C. § 1715.

C. Class Notice.

1. Dissemination of the Mailed and Emailed Class Notice.

a. By no later than seven (7) days following the execution of this Settlement Agreement, TracFone shall provide the Settlement Administrator with the Customer Data.

b. By no later than the Notice Date, the Settlement Administrator shall update the mailing addresses in the Customer Data through the National Change of Address Database, and send the Summary Settlement Notice, substantially in the form attached as Exhibit 6 to this Settlement Agreement, by First-Class U.S. Mail, proper postage prepaid, to each mailing address in the Customer Data, as updated. For any mailed Summary Settlement Notices that are returned with forwarding address information, the Settlement Administrator

shall re-mail the Summary Settlement Notice once to the new address indicated. For any mailed Summary Settlement Notices that are returned undeliverable without forwarding address information, the Settlement Administrator shall make reasonable efforts to identify an updated address and promptly re-mail the Summary Settlement Notice to the extent an updated address is identified.

c. By no later than the Notice Date, the Settlement Administrator shall email the Email Summary Notice, substantially in the form attached as Exhibit 8 to this Settlement Agreement, to each email address in the Customer Data that is not indicated in the Customer 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 in the form attached as Exhibit 8 to this Settlement Agreement, to each email address that is not in the Customer Data but that is provided on a Claim Form received by the Settlement Administrator prior to or on the Notice Date. The "Sender" address for all emails covered by this paragraph shall be from the tracfone.com domain. The subject line for all emails covered by this paragraph shall be: Notice of "Unlimited" Mobile Data Settlement and Refund Check.

2. Contents of the Class Notice: The Class Notice shall be substantially in the form attached as Exhibit 2 to this Settlement Agreement, and shall advise Class Members of, *inter alia*, the following:

a. General Terms: The Class Notice shall contain a plain, neutral, objective, and concise description of the nature of the Class Action Lawsuits and the proposed Settlement.

b. Opt-Out Rights: The Class Notice shall inform Class Members that they have the right to opt-out of the Class and the Settlement. The Class Notice shall provide the deadline and procedures for exercising this right.

c. Objection to Settlement: The Class Notice shall inform Class Members of their right to object to the proposed Settlement, Class Counsel's fee application, and/or the requested service awards for Plaintiffs, and of their right to appear at the Fairness Hearing. The Class Notice shall provide the deadlines and procedures for exercising these rights.

d. Fees and Expenses: The Class Notice shall inform Class Members about the amounts being sought by Class Counsel as Attorneys' Fees and Expenses and the amounts of the service awards being sought for the Plaintiffs, and shall explain that any Attorneys' Fees or Expenses and service awards for the Plaintiffs that are awarded by the Court will be paid by TracFone in addition to the amounts being made available as relief to Settlement Class Members and without reducing such relief amounts.

e. Claim Form: The Class Notice shall include the Claim Form, which shall be substantially in the form attached as Exhibit 1 to this Settlement Agreement. The Claim Form shall inform Class Members that only eligible persons will receive monetary relief pursuant to this Settlement. The Class Notice and the Claim Form shall provide the deadline and procedures for submitting Claim Forms

3. Publication and Internet/Media Notice Program: The Settlement Administrator (or other person(s) at the Settlement Administrator's direction) shall cause the Summary Settlement Notice (substantially in the form attached hereto as Exhibit 6) to be published in publications and media outlets to be agreed to by the Parties following consultation

with the FTC. Notice shall also be provided via an Internet-based notice program, including banner ads on Internet sites and mobile applications targeted to the Class. The Parties and the Settlement Administrator are working closely, and will continue to work closely, with HF Media LLC in designing and implementing a publication and Internet/media notice program. The publication and Internet/media notice program described in this paragraph shall commence as soon as practicable following the entry of the Preliminary Approval Order and, in all events, shall commence not later than the Notice Date.

4. Additional Internet-Based Notice: Beginning no later than the Notice Date, and lasting until and through the Claim Deadline, TracFone shall cause a notice to be posted prominently on the Straight Talk, Net10, Simple Mobile, and Telcel America brands' Facebook pages and Internet home pages—including the pages that customers view when logging into their online TracFone accounts. Such notice shall read: “If you had an ‘unlimited’ service plan from Straight Talk, Net10, Simple Mobile or Telcel America between July 24, 2009 – December 31, 2014, you may be entitled to a partial refund. For details please visit www.PrepaidPhoneRefund.com.” The website address in such notice shall be a live link to the Settlement Website.

5. SMS Notice: By no later than seven (7) days following the Notice Date and as directed by the Preliminary Approval Order, TracFone shall send, via SMS (text message), the SMS Notice, substantially in the form attached as Exhibit 7 to this Settlement Agreement, to all Class Members who, on the date the SMS messages are sent, are current subscribers to a TracFone data service plan and who have not opted out of receiving such messages. The recipients of such SMS messages shall not be charged for such messages. The Parties intend that these messages are informational messages pertaining to the TracFone

subscribers' service. The requirement for TracFone to send SMS messages under this Section shall be contingent upon the Court finding in the Preliminary Approval Order that these are informational messages pertaining to the TracFone subscribers' service. By no later than seven (7) days following the date the SMS messages are sent, TracFone shall also provide to the Settlement Administrator a list of Class Members who are current subscribers to a TracFone data service plan and the corresponding telephone numbers as of the date the SMS messages are sent.

6. Settlement Website: The Settlement Administrator shall establish and maintain an Internet website, at the web address www.PrepaidPhoneRefund.com ("Settlement Website") where Class Members can obtain further information about the terms of this Settlement, their rights, important dates and deadlines, and related information. Class Members shall also be able to submit Claim Forms electronically via the Settlement Website. The Settlement Website shall include, in PDF format, the operative complaints in the Class Action Lawsuits, this Settlement Agreement, the Class Notice, Class Counsel's fee application (after it is filed), and other case documents as agreed upon by the Parties and/or required by the Court, and shall be operational and live by no later than one (1) business day following entry of the Preliminary Approval Order. The Settlement Website shall be optimized for display on mobile phones. The Settlement Website shall be separate from and in addition to any website or web page that the FTC may establish or maintain relating to this Settlement Agreement or the FTC Agreement, though any such FTC website or web page and the Settlement Website may cross-reference and/or hyperlink to one another.

7. Toll-Free Telephone Number: The Settlement Administrator shall establish and maintain a toll-free telephone number ("Toll-Free Number") where Class Members can obtain further information about the Settlement and their rights, and request that a hard copy

Claim Form or Class Notice be mailed to them. The Toll-Free Number shall be operational and live by no later than one (1) business day following entry of the Preliminary Approval Order.

VI. REQUESTS FOR EXCLUSION

A. Any Class Member who wishes to be excluded from the Class must mail a written request for exclusion to the Settlement Administrator at the address provided in the Class Notice, postmarked no later than sixty (60) days after the Notice Date, and specifying that he or she wants to be excluded from the Class.

B. Any Class Member who does not submit a timely and valid written request for exclusion as provided in the preceding Section VI.A shall be bound by all subsequent proceedings, orders, and judgments in the Class Action Lawsuits, including, but not limited to, the Release, even if he or she has litigation pending or subsequently initiates litigation against Defendants relating to the claims and transactions released in the Class Action Lawsuits.

C. Not later than ten (10) days before the Fairness Hearing, the Settlement Administrator shall file with the Court a complete and final list of Class Members who submitted timely and valid requests to exclude themselves from the Class.

VII. OBJECTIONS TO SETTLEMENT

A. Any Settlement Class Member may object to the Settlement, Class Counsel's request for Attorneys' Fees and Costs, and/or the requested service awards for Plaintiffs. To be valid, any objection must be made in writing, must be mailed to the Settlement Administrator at the address provided in the Class Notice, postmarked no later than sixty (60) days after the Notice Date, and must include the following: (1) the name of this case; (2) the objector's full name, address and telephone number; (3) the basis upon which the objector claims to be a Class Member, including: (a) the brand(s) (Straight Talk, Net10, Simple Mobile, or Telcel America) of the mobile service that the objector believes may have been subject to throttling, suspension, or

termination; (b) their mobile telephone number(s) for the brand(s); and (c) the approximate time period when they had that mobile service; (4) all grounds for the objection, accompanied by any legal and factual support; (5) whether the objector is represented by counsel, and if so the identity of such counsel; (6) a statement confirming whether the objector intends to personally appear and/or testify at the Fairness Hearing; (7) the identity of any counsel who will appear at the Fairness Hearing on the objector's behalf; (8) a list of any witnesses the objector will call to testify, or any documents or exhibits they may use, at the Fairness Hearing; and (9) the objector's signature.

B. Any Settlement Class Member who submits a timely and valid written objection, as described in Section VII.A herein, may appear at the Fairness Hearing, either in person or through personal counsel hired at the Settlement Class Member's own personal expense, if they indicate in their written objection their intent to appear at the Fairness Hearing.

C. Not later than ten (10) days before the Fairness Hearing, the Settlement Administrator shall file with the Court copies of all timely and valid written objections and requests to appear at the Fairness Hearing.

D. Any Settlement Class Member who fails to comply with the provisions of the preceding paragraphs of this Section VII shall waive and forfeit any and all rights he or she may have to appear separately and/or object and shall be bound by all the terms of this Settlement Agreement and by all proceedings, orders, and judgments in the Class Action Lawsuits.

E. Any Settlement Class Member who objects to the Settlement shall nevertheless be entitled to all benefits of the Settlement if it is approved and becomes final, including monetary relief if he or she is a Valid Claimant.

VIII. RELEASE AND WAIVER

A. The Parties agree to the following release and waiver, which shall take effect upon the Final Settlement Date.

B. In consideration for the Settlement benefits described in this Settlement Agreement, Releasing Parties, will fully, finally, and forever release, relinquish, acquit, and discharge the Released Parties from, and shall not now or hereafter institute, maintain, or assert on their own behalf, on behalf of the Class, or on behalf of any other person or entity, any and all manner of claims, actions, causes of action, suits, rights, debts, sums of money, payments, obligations, reckonings, contracts, agreements, executions, promises, damages, liens, judgments, and demands of whatever kind, type or nature whatsoever, both at law and in equity, whether past, present, mature or not yet mature, known or unknown, suspected or unsuspected, contingent or non-contingent, whether based on federal, state, or local law, statute, ordinance, regulation, code, contract, common law, or any other source, or any claim that Plaintiffs or Settlement Class Members ever had, now have, may have, or hereafter can, shall, or may ever have against the Released Parties,¹ that were or reasonably could have been alleged in the Class Action Lawsuits or in any other court, tribunal, arbitration panel, commission, agency, or before any governmental and/or administrative body, or any other adjudicatory body, on the basis of, connected with, arising from or relating to the subject matter or allegations of the Class Action Lawsuits, including, without limitation, any such claims: (1) alleged in the Class Action Lawsuits; (2) for rescission, restitution, or unjust enrichment for all damages of any kind; (3) for violations of any state's deceptive, unlawful, and/or unfair business and/or trade practices, false, misleading or fraudulent advertising, consumer fraud, and/or consumer protection statutes; (4)

¹ For the avoidance of doubt, the list preceding this footnote in this paragraph is subject to the limiting language in this paragraph that follows this footnote.

for violations of the Uniform Commercial Code, any breaches of express, implied, and/or any other warranties, any similar federal, state, or local statutes, codes; or (5) for damages, costs, expenses, extra-contractual damages, compensatory damages, exemplary damages, special damages, penalties, punitive damages, and/or damage multipliers, disgorgement, declaratory relief, expenses, interest, and/or attorneys' fees and costs.

C. Notwithstanding the language in this Section and/or this Settlement Agreement, the members of the Class, other than Plaintiffs, are not releasing any claims of or relating to personal injury.

D. Plaintiffs represent and warrant that they are the sole and exclusive owner of all claims that they personally are releasing under this Settlement Agreement. Plaintiffs further acknowledge that they have not assigned, pledged, or in any manner whatsoever, sold, transferred, assigned, or encumbered any right, title, interest, or claim arising out of or in any way whatsoever pertaining to the Class Action Lawsuits, and that Plaintiffs are not aware of anyone other than themselves claiming any interest, in whole or in part, in the Class Action Lawsuits, or in any benefits, proceeds or values under the Class Action Lawsuits, on their behalf.

E. Plaintiffs expressly understand and acknowledge, and all Settlement Class Members will be deemed by the Final Order and Final Judgment to acknowledge, that certain principles of law, including, but not limited to, **Section 1542 of the Civil Code of the State of California, provide that “a general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.”** To the extent that anyone might argue that these principles of law are applicable, Plaintiffs hereby agree that the provisions of all such principles of law or similar federal or state

laws, rights, rules, or legal principles, to the extent they are found to be applicable herein, are hereby knowingly and voluntarily waived, relinquished, and released by Plaintiffs and, by application of law, all Settlement Class Members.

F. The Parties shall be deemed to have agreed that the Release set forth herein will be and may be raised as a complete defense to and will preclude any action or proceeding based on the claims released by and through this Settlement Agreement.

G. Nothing in this Release shall preclude any action to enforce the terms of this Settlement Agreement, including participation in any of the processes detailed therein.

H. Plaintiffs and Defendants hereby agree and acknowledge that the provisions of this Release together constitute an essential and material term of this Settlement Agreement and shall be included by reference in any Final Order and Final Judgment entered by the Court.

IX. ATTORNEYS' FEES AND EXPENSES AND PLAINTIFF SERVICE AWARDS

A. Subject to the provisions of this Section, Class Counsel will make, and Defendants agree not to oppose, an application for an award of Attorneys' Fees and Expenses in amounts not to exceed: (a) \$5 million for attorneys' fees; and (b) \$100,000.00 for litigation expenses. Class Counsel, in their sole discretion, shall allocate and distribute among Plaintiffs' counsel any Attorneys' Fees and Expenses that are awarded by the Court. The Attorneys' Fees and Expenses awarded by the Court shall be separately paid by TracFone in addition to (*i.e.*, on top of) the Settlement Fund.

B. In the event the Court declines to approve, in whole or in part, the payment of Attorneys' Fees and Expenses in the amounts requested, the remaining provisions of this Settlement Agreement shall remain in full force and effect.

C. TracFone shall make an initial payment to Class Counsel of one-half (50%) of the total aggregate amount of Attorneys' Fees and Expenses awarded by the Court ("Initial

Payment”), up to a maximum of \$2,500,000, within ten (10) calendar days after entry of the Court’s order so awarding Attorneys’ Fees and Expenses. If the Final Order and Final Judgment (or the order awarding Attorneys’ Fees and Expenses) is reversed, vacated, modified, and/or remanded for further proceedings or otherwise disposed of in any manner other than one resulting in an affirmance, then Plaintiffs’ counsel (or, as applicable, any and all successor(s) or assigns of their respective firms) shall, within ten (10) calendar days of such event, (i) repay to TracFone, as applicable, the full amount of the Initial Payment amounts paid to them, or (ii) repay to TracFone, as applicable, the amount by which the award of Attorneys’ Fees and Expenses has been reduced. The Class Counsel firms shall each execute a guarantee of repayment prior to TracFone’s payment of the Initial Payment.

D. TracFone shall make a payment of the remaining one-half (50%) of the Attorneys’ Fees and Expenses awarded by the Court (“Final Payment”), up to a maximum of \$2,500,000, to Class Counsel within ten (10) calendar days after the Final Settlement Date.

E. The amounts awarded by the Court in Attorneys’ Fees and Expenses shall be the sole aggregate compensation paid by Defendants to Plaintiffs’ counsel in connection with the Class Action Lawsuits.

F. Class Counsel will make, and Defendants agree not to oppose, an application for service awards, in amounts not to exceed \$2,500 each, for the Plaintiffs to compensate them for their efforts and commitment on behalf of the Class. Neither Class Counsel’s application for, nor any Plaintiff’s entitlement to, a service award shall be conditioned in any way upon the Plaintiff’s support for this Settlement Agreement. The service awards awarded by the Court shall be separately paid by TracFone in addition to (*i.e.*, on top of) the Settlement Fund.

G. In the event the Court declines to approve, in whole or in part, the payment of service awards in the amounts requested, the remaining provisions of this Settlement Agreement shall remain in full force and effect.

H. TracFone shall pay any service awards granted by the Court within ten (10) calendar days after the Final Settlement Date, in accordance with instructions for payment provided by Class Counsel.

I. Class Counsel shall file their application for Attorneys' Fees and Expenses, and their request for service awards for the Plaintiffs, no later than thirty (30) days following the Notice Date. Such application shall be posted to the Settlement Website after it is filed.

X. CONSOLIDATION, PRELIMINARY APPROVAL ORDER, FINAL ORDER, FINAL JUDGMENT AND RELATED ORDERS

A. Within fourteen (14) days after the full execution of this Settlement Agreement, Plaintiffs shall file with the Court:

1. An unopposed motion to consolidate the four Class Action Lawsuits, pursuant to Federal Rule of Civil Procedure 42, under a single case caption and under the case number for the first-filed Hansell Action; and

2. A motion seeking preliminary approval of the Settlement and asking the Court to enter a Preliminary Approval Order substantially in the form attached as Exhibit 5 to this Settlement Agreement.

B. In connection with the motion for preliminary approval, the Parties shall ask the Court to set a date for the Fairness Hearing that is no earlier than the Claim Deadline and ensures compliance with the requirements of 28 U.S.C. § 1715(d).

C. Not later than thirty (30) days following the Notice Date, the Parties shall file motion(s) seeking final approval of the Settlement and asking the Court to enter the Final Order

and Final Judgment substantially in the forms attached to this Settlement Agreement as Exhibits 3 and 4, respectively.

XI. MODIFICATION OR TERMINATION OF THIS SETTLEMENT AGREEMENT

A. The terms and provisions of this Settlement Agreement may be amended, modified, or expanded by written agreement of the Parties and approval of the Court; provided, however, that, after entry of the Final Order and Final Judgment, the Parties, after consultation with the FTC, may by written agreement effect such amendments, modifications, or expansions of this Settlement Agreement and its implementing documents (including all exhibits hereto) without further notice to the Class or approval by the Court if such changes are consistent with the Court's Final Order and Final Judgment and do not limit the rights of Class Members under this Settlement Agreement.

B. This Settlement Agreement shall terminate at the discretion of either Defendants or Plaintiffs, through Class Counsel, if: (1) the Court, including on subsequent review by any appellate court(s) in the Class Action Lawsuits, ultimately rejects, modifies, or denies approval of any portion of this Settlement Agreement that the terminating party reasonably determines is material, including, without limitation, the terms of relief, the provisions relating to notice, the definition of the Class, and/or the terms of the Release; or (2) the Court, including on review by any appellate court(s) in the Class Action Lawsuits, does not ultimately enter or completely affirm, or alters or expands, any portion of the Final Order and/or Final Judgment in a manner that the terminating party reasonably determines is material; or, (3) the FTC Agreement is not approved by a majority vote of the FTC Commissioners.

C. The terminating party must exercise any option to withdraw from and terminate this Settlement Agreement, as provided under Section XI.B above, by a signed writing served on the other Parties no later than twenty-one (21) days after receiving notice of the event prompting

the termination. If an option to withdraw from and terminate this Settlement Agreement arises under Section XI.B above, neither Defendants nor Plaintiffs are required for any reason or under any circumstance to exercise that option and any exercise of that option shall be in good faith.

D. In the event that a terminating party exercises its option to withdraw from and terminate this Settlement Agreement pursuant to this Section XI:

1. This Settlement Agreement and the Settlement proposed herein shall be null and void and shall have no force or effect, and no party to this Settlement Agreement shall be bound by any of its terms, except for the terms of this Section XI or as otherwise specifically provided for herein;

2. The Parties will petition to have any stay orders that are entered pursuant to this Settlement Agreement lifted;

3. This Settlement Agreement and all of its provisions, and all negotiations, statements, and proceedings relating to it, shall be without prejudice to the rights of Defendants, Plaintiffs, or any Class Member, all of whom shall be restored to their respective positions existing immediately before the execution of this Settlement Agreement, except that the Parties shall cooperate in requesting that the Court set a new scheduling order such that neither Party's substantive or procedural rights is prejudiced by the attempted Settlement;

4. The Released Parties, as defined herein, expressly and affirmatively reserve all defenses, arguments, and motions as to all claims that have been or might later be asserted in the Class Action Lawsuits, including, without limitation, Defendants' argument that the Class Action Lawsuits may not be litigated as a class action;

5. Plaintiffs and all other Class Members, on behalf of themselves and their heirs, assigns, executors, administrators, predecessors, and successors, expressly and

affirmatively reserve and do not waive any motions as to, and arguments in support of, all claims, causes of actions or remedies that have been or might later be asserted in the Class Action Lawsuits including, without limitation, any argument concerning class certification, consumer fraud, and damages;

6. This Settlement Agreement, the fact of its having been made, the negotiations leading to it, any discovery or action taken by a Party or Class Member pursuant to this Settlement Agreement, or any documents or communications pertaining to this Settlement Agreement shall not be admissible or entered into evidence for any purpose whatsoever in the Class Action Lawsuits or in any other proceeding, other than to enforce the terms of this Settlement Agreement;

7. Any Settlement-related order(s) or judgment(s) entered with respect to the Browning Settlement after the date of execution of this Settlement Agreement shall be deemed vacated and shall be without any force or effect and Plaintiff John Browning, through counsel, will notice the withdrawal of his motion for preliminary approval of the Second Superseded Settlement Agreement in the Browning Action.

8. All Administrative Costs incurred and not yet paid from the Settlement Fund will be paid from the Settlement Fund. Neither Plaintiffs nor Class Counsel shall be responsible for any of these costs or other Settlement-related costs; and

9. Notwithstanding the terms of this Section, if the Settlement is not consummated, Class Counsel may include any time spent in settlement efforts as part of any fee petition filed at the conclusion of the case, and Defendants reserve the right to object to the reasonableness of such requested fees.

XII. GENERAL MATTERS AND RESERVATIONS

A. This Settlement Agreement reflects, among other things, the compromise and settlement of disputed claims among the Parties hereto, and neither this Settlement Agreement nor the releases given herein, nor any consideration therefor, nor any actions taken to carry out this Settlement Agreement are intended to be, nor may they be deemed or construed to be, an admission or concession of liability, or the validity of any claim, or defense, or of any point of fact or law (including but not limited to matters respecting class certification) on the part of any party. Defendants expressly deny the allegations of the Plaintiffs' complaints. Neither this Settlement Agreement, nor the fact of settlement, nor the settlement proceedings, nor settlement negotiations, nor any related document, shall be used as an admission of any fault or omission by Defendants, or be offered or received in evidence as an admission, concession, presumption, or inference of any wrongdoing by Defendants in any proceeding, other than such proceedings as may be necessary to consummate, interpret, or enforce this Settlement Agreement.

B. The Parties and their counsel agree to keep the existence and contents of this Settlement Agreement confidential until the date on which the Settlement Agreement or a Notice of Settlement is filed with the Court, provided, however, that this Section shall not prevent: (a) counsel for the Parties from informing the Court regarding the status of this Settlement; (b) Defendants from disclosing such information, prior to the date on which the Settlement Agreement is filed, to state and federal agencies, independent accountants, actuaries, advisors, financial analysts, insurers, attorneys, or any other person or entity to whom Defendant deems it necessary to meet its regulatory obligations or fiduciary duties; or (c) the Parties and their counsel from disclosing such information to persons or entities (such as experts, courts, co-counsel, and/or administrators) to whom the Parties agree disclosure must be made in order to effectuate the terms and conditions of this Settlement Agreement.

C. Plaintiffs and Class Counsel agree that the confidential information made available to them solely through the settlement process was made available, as agreed to, on the condition that neither Plaintiffs nor their counsel may disclose it to third parties (other than experts or consultants retained by Plaintiffs in connection with this case); that it not be the subject of public comment; that it not be used by Plaintiffs or Plaintiffs' counsel in any way in this litigation should Settlement not be achieved, and that it is to be returned if a Settlement is not concluded; provided, however, that nothing contained herein shall prohibit Plaintiffs from seeking such information through formal discovery if not previously requested through formal discovery, from utilizing such information obtained through discovery in the Class Action Lawsuits, in the event the Settlement is not achieved, including documents and information that have been produced by Defendants through formal discovery in the Class Action Lawsuits (subject to the terms and conditions of any applicable protective orders), or from referring to the existence of such information in connection with the Settlement of this litigation.

D. The Protective Orders previously entered into the Actions shall remain in full force and effect,

E. Within one-hundred-and-eighty (180) days after the Final Settlement Date (unless the time is extended by agreement of the Parties), Plaintiffs' counsel, and any expert or other consultant employed by them in such capacity or any other individual with access to documents provided by Defendants to Plaintiffs' counsel, shall either: (i) return to Defendants' Counsel, all such documents and materials (and all copies of which documents in whatever form made or maintained) produced by Defendants in the Class Action Lawsuits and any and all handwritten notes summarizing, describing, or referring to such documents; or (ii) certify to Defendants' Counsel that all such documents and materials (and all copies of such documents in whatever

form made or maintained) produced by Defendants in the Class Action Lawsuits and any and all handwritten and/or electronically recorded notes summarizing, describing, or referring to such documents have been destroyed, provided, however, that this Section shall not apply to any documents made part of the record in connection with a Claim, nor to any documents made part of a Court filing, nor to Plaintiffs' counsel's work product. Defendants' Counsel agrees to hold all documents returned by Plaintiffs' counsel, and any expert or other consultant or any other individual employed by Plaintiffs' counsel in such capacity with access to documents provided by Defendants until two years after the Payment Date. One (1) year plus thirty (30) days after the Payment Date, the Settlement Administrator shall return all documents and materials to Defendants' Counsel and/or Class Counsel that produced the documents and materials, except that it shall destroy any and all Claim Forms, including any and all information and/or documentation submitted by Class Members.

F. Defendants' execution of this Settlement Agreement shall not be construed to release—and Defendants expressly do not intend to release—any claim Defendants may have or make against any insurer for any cost or expense incurred in connection with this Settlement, including, without limitation, for attorneys' fees and costs.

G. Class Counsel represent that: (1) they are authorized to enter into this Settlement Agreement on behalf of their respective law firms; and (2) they are seeking to protect the interests of the Class.

H. Plaintiffs represent and certify that: (1) they have agreed to serve as representatives of the Class; (2) they are willing, able, and ready to perform all of the duties and obligations of representatives of the Class; (3) they have read the operative complaint, or have had the contents of such pleadings described to them; (4) they are familiar with the results of the

fact-finding undertaken by Class Counsel; (5) they have read this Settlement Agreement or have received a detailed description of it from Class Counsel and they have agreed to its terms; (6) they have consulted with Class Counsel about the Class Action Lawsuits and this Settlement Agreement and the obligations imposed on them as representatives of the Class; and (7) they shall remain and serve as representatives of the Class until the terms of the Settlement Agreement are effectuated, this Settlement Agreement is terminated in accordance with its terms, or the Court at any time determines that said Plaintiffs cannot represent the Class.

I. Defendants represent and warrant that the respective individual(s) executing this Settlement Agreement are authorized to enter into this Settlement Agreement on behalf of the relevant Defendant.

J. This Settlement Agreement, complete with its exhibits, sets forth the sole and entire agreement among the Parties with respect to its subject matter, and it may not be altered, amended, or modified except by written instrument executed by Class Counsel and Defendants' Counsel. The Parties expressly acknowledge that no other agreements, arrangements, or understandings not expressed in this Settlement Agreement exist among or between them and that in deciding to enter into this Settlement Agreement, they rely solely upon their judgment and knowledge. This Settlement Agreement supersedes any prior agreements, understandings, or undertakings (written or oral) by and between the Parties regarding the subject matter of this Settlement Agreement. This includes, but is not limited to the Second Superseded Settlement Agreement in the Browning Action and the Binding Term Sheet.

K. This Settlement Agreement and any amendments thereto shall be governed by and interpreted according to the law of the State of California, notwithstanding its conflict of laws provisions.

L. Any disagreement and/or action to enforce this Settlement Agreement shall be commenced and maintained only in the Court in which the Class Action Lawsuits are pending.

M. Whenever this Settlement Agreement requires or contemplates that one of the Parties shall or may give notice to the other, notice shall be provided by e-mail and/or next-day (excluding Saturdays, Sundays, and Legal Holidays) express delivery service as follows:

1. If to Defendants, then to:

Steven J. Brodie of Carlton Fields Jordan Burt, P.A., 100 S.E. Second Street, Suite 4200, Miami, Florida 33131; and Joel S. Feldman of Sidley Austin LLP, One South Dearborn Street, Chicago, Illinois 60603.

2. If to Plaintiffs, then to:

Michael W. Sobol of Lief, Cabaser, Heimann & Bernstein, LLP, 275 Battery Street 29th Floor, San Francisco, California 94111; Daniel M. Hattis of Hattis Law, 2300 Geng Road, Suite 200, Palo Alto, California 94303; and John Allen Yanchunis, Sr. and J. Andrew Meyer of Morgan & Morgan Complex Litigation Group, 201 N. Franklin Street, 7th Floor, Tampa, Florida 33602.

N. All time periods set forth herein shall be computed in calendar days unless otherwise expressly provided. In computing any period of time prescribed or allowed by this Settlement Agreement or by order of the Court, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a Legal Holiday (as defined in Fed. R. Civ. P. 6(a)(6)), or, when the act to be done is the filing of a paper in court, a day on which weather or other conditions have made the office of the clerk of the court inaccessible, in which event the period shall run until the end of the next day that is not one of the aforementioned days.

O. The Parties reserve the right, subject to the Court's approval, to agree to any reasonable extensions of time that might be necessary to carry out any of the provisions of this Settlement Agreement.

P. The Class, Plaintiffs, Class Counsel, Defendants, or Defendants' Counsel shall not be deemed to be the drafter of this Settlement Agreement or of any particular provision, nor shall they argue that any particular provision should be construed against its drafter or otherwise resort to the *contra proferentem* canon of construction. All Parties agree that this Settlement Agreement was drafted by counsel for the Parties during extensive arm's length negotiations. No parol or other evidence may be offered to explain, construe, contradict, or clarify its terms, the intent of the Parties or their counsel, or the circumstances under which this Settlement Agreement was made or executed.

Q. The Parties expressly acknowledge and agree that this Settlement Agreement and its exhibits, along with all related drafts, motions, pleadings, conversations, negotiations, and correspondence, constitute an offer of compromise and a compromise within the meaning of Federal Rule of Evidence 408 and any equivalent rule of evidence in any state. In no event shall this Settlement Agreement, any of its provisions or any negotiations, statements, or court proceedings relating to its provisions in any way be construed as, offered as, received as, used as, or deemed to be evidence of any kind in the Class Action Lawsuits, any other action, or in any judicial, administrative, regulatory, or other proceeding, except in a proceeding to enforce this Settlement Agreement or the rights of the Parties or their counsel. Without limiting the foregoing, neither this Settlement Agreement nor any related negotiations, statements, or court proceedings shall be construed as, offered as, received as, used as, or deemed to be evidence or an admission or concession of any liability or wrongdoing whatsoever on the part of any person

or entity, including, but not limited to, the Released Parties, Plaintiffs, or the Class or as a waiver by the Released Parties, Plaintiffs or the Class of any applicable privileges, claims, or defenses.

R. Plaintiffs expressly affirm that the allegations contained in the complaint were made in good faith and have a basis in fact, but consider it desirable for the Class Action Lawsuits to be settled and dismissed because of the substantial benefits that the proposed Settlement will provide to Class Members.

S. The Parties, their successors and assigns, and their counsel undertake to implement the terms of this Settlement Agreement in good faith, and to use good faith in resolving any disputes that may arise in the implementation of the terms of this Settlement Agreement.

T. The waiver by one party of any breach of this Settlement Agreement by another party shall not be deemed a waiver of any prior or subsequent breach of this Settlement Agreement.

U. If one party to this Settlement Agreement considers another party to be in breach of its obligations under this Settlement Agreement, that party must provide the breaching party with written notice of the alleged breach and provide a reasonable opportunity to cure the breach before taking any action to enforce any rights under this Settlement Agreement.

V. The Parties, their successors and assigns, and their counsel agree to cooperate fully with one another in seeking Court approval of this Settlement Agreement and to use their best efforts to effect the prompt consummation of this Settlement Agreement and the proposed Settlement.

W. While this Settlement Agreement provides the specifications for how monetary redress will be provided to Valid Claimants, the Parties intend and agree that it does not alter the FTC Agreement, including any obligations of TracFone under the FTC Agreement.

X. The Parties recognize that the Payment Date may occur prior to the Final Settlement Date and agree that, in the event that occurs, then upon the occurrence of the Final Settlement Date, the Release shall apply *nunc pro tunc*. Nothing herein shall limit Defendants' rights to assert any legal or equitable defense to any claim by a Class Member if a Final Settlement Date does not occur.

Y. This Settlement Agreement may be signed with a facsimile signature or .pdf scanned signature, and in counterparts, each of which shall constitute a duplicate original.

Agreed to on the date indicated below.

APPROVED AND AGREED TO BY THE PLAINTIFFS:

Dated: Jan 28, 2015

David Hansell
David Hansell

Dated: _____, 2015

Edward Tooley

Dated: _____, 2015

Christopher Valdez

Dated: _____, 2015

Mona Gandhi

Dated: _____, 2015

Marisha Johnston

Dated: _____, 2015

Marshall Tietje

Dated: _____, 2015

Martin Blaqmoor

Dated: _____, 2015

John Browning

APPROVED AND AGREED TO BY DEFENDANTS:

Dated: _____, 2015

TRACFONE WIRELESS, INC.

By: _____

Title: _____

Dated: _____, 2015

WAL-MART STORES, INC.

By: _____

Title: _____

APPROVED AND AGREED TO BY THE PLAINTIFFS:

Dated: _____, 2015

David Hansell

Dated: January 29th, 2015



Edward Tooley

Dated: _____, 2015

Christopher Valdez

Dated: _____, 2015

Mona Gandhi

Dated: _____, 2015

Marisha Johnston

Dated: _____, 2015

Marshall Tietje

Dated: _____, 2015

Martin Blaqmoor

Dated: _____, 2015

John Browning

APPROVED AND AGREED TO BY DEFENDANTS:

Dated: _____, 2015

TRACFONE WIRELESS, INC.

By: _____

Title: _____

Dated: _____, 2015

WAL-MART STORES, INC.

By: _____

Title: _____

APPROVED AND AGREED TO BY THE PLAINTIFFS:

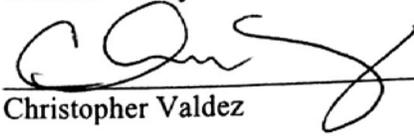
Dated: _____, 2015

David Hansell

Dated: _____, 2015

Edward Tooley

Dated: January 29, 2015



Christopher Valdez

Dated: _____, 2015

Mona Gandhi

Dated: _____, 2015

Marisha Johnston

Dated: _____, 2015

Marshall Tietje

Dated: _____, 2015

Martin Blaqmoor

Dated: _____, 2015

John Browning

APPROVED AND AGREED TO BY DEFENDANTS:

Dated: _____, 2015

TRACFONE WIRELESS, INC.

By: _____

Title: _____

Dated: _____, 2015

WAL-MART STORES, INC.

By: _____

Title: _____

APPROVED AND AGREED TO BY THE PLAINTIFFS:

Dated: _____, 2015

David Hansell

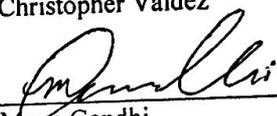
Dated: _____, 2015

Edward Tooley

Dated: _____, 2015

Christopher Valdez

Dated: Jan 30, 2015



Merri Gandhi

Dated: _____, 2015

Marisha Johnston

Dated: _____, 2015

Marshall Tietje

Dated: _____, 2015

Martin Blaqmoor

Dated: _____, 2015

John Browning

APPROVED AND AGREED TO BY DEFENDANTS:

Dated: _____, 2015

TRACFONE WIRELESS, INC.
By: _____
Title: _____

Dated: _____, 2015

WAL-MART STORES, INC.
By: _____
Title: _____

APPROVED AND AGREED TO BY THE PLAINTIFFS:

Dated: _____, 2015
_____ David Hansell

Dated: _____, 2015
_____ Edward Tooley

Dated: _____, 2015
_____ Christopher Valdez

Dated: _____, 2015
_____ Mona Gandhi

Dated: January 28th, 2015
Marisha Johnston
Marisha Johnston

Dated: _____, 2015
_____ Marshall Tietje

Dated: _____, 2015
_____ Martin Blaqmoor

Dated: _____, 2015
_____ John Browning

APPROVED AND AGREED TO BY DEFENDANTS:

Dated: _____, 2015 TRACFONE WIRELESS, INC.
By: _____
Title: _____

Dated: _____, 2015 WAL-MART STORES, INC.
By: _____
Title: _____

APPROVED AND AGREED TO BY THE PLAINTIFFS:

Dated: _____, 2015

David Hansell

Dated: _____, 2015

Edward Tooley

Dated: _____, 2015

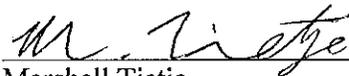
Christopher Valdez

Dated: _____, 2015

Mona Gandhi

Dated: _____, 2015

Marisha Johnston

Dated: 1-30, 2015


Marshall Tietje

Dated: _____, 2015

Martin Blaqmoor

Dated: _____, 2015

John Browning

APPROVED AND AGREED TO BY DEFENDANTS:

Dated: _____, 2015
TRACFONE WIRELESS, INC.
By: _____
Title: _____

Dated: _____, 2015
WAL-MART STORES, INC.
By: _____
Title: _____

APPROVED AND AGREED TO BY THE PLAINTIFFS:

Dated: _____, 2015

David Hansell

Dated: _____, 2015

Edward Tooley

Dated: _____, 2015

Christopher Valdez

Dated: _____, 2015

Mona Gandhi

Dated: _____, 2015

Marisha Johnston

Dated: _____, 2015

Marshall Tietje

Dated: *January 29*, 2015

Martin Blaqmoor

Martin Blaqmoor

Dated: _____, 2015

John Browning

APPROVED AND AGREED TO BY DEFENDANTS:

Dated: _____, 2015

TRACFONE WIRELESS, INC.

By: _____

Title: _____

Dated: _____, 2015

WAL-MART STORES, INC.

By: _____

Title: _____

APPROVED AND AGREED TO BY THE PLAINTIFFS:

Dated: _____, 2015
_____ David Hansell

Dated: _____, 2015
_____ Edward Tooley

Dated: _____, 2015
_____ Christopher Valdez

Dated: _____, 2015
_____ Mona Gandhi

Dated: _____, 2015
_____ Marisha Johnston

Dated: _____, 2015
_____ Marshall Tietje

Dated: _____, 2015
_____ Martin Blaqmoor

Dated: 1/29, 2015

_____ John Browning

APPROVED AND AGREED TO BY DEFENDANTS:

Dated: _____, 2015 TRACFONE WIRELESS, INC.
By: _____
Title: _____

Dated: _____, 2015 WAL-MART STORES, INC.
By: _____
Title: _____

APPROVED AND AGREED TO BY THE PLAINTIFFS:

Dated: _____, 2015 _____
David Hansell

Dated: _____, 2015 _____
Edward Tooley

Dated: _____, 2015 _____
Christopher Valdez

Dated: _____, 2015 _____
Mona Gandhi

Dated: _____, 2015 _____
Marisha Johnston

Dated: _____, 2015 _____
Marshall Tietje

Dated: _____, 2015 _____
Martin Blaquoor

Dated: _____, 2015 _____
John Browning

APPROVED AND AGREED TO BY DEFENDANTS:

Dated: 1/29/15, 2015 TRACFONE WIRELESS, INC.
By: Roseta Skind
Title: Chief Marketing Officer

Dated: _____, 2015 WAL-MART STORES, INC.
By: _____
Title: _____

APPROVED AND AGREED TO BY THE PLAINTIFFS:

Dated: _____, 2015 _____
David Hansell

Dated: _____, 2015 _____
Edward Tooley

Dated: _____, 2015 _____
Christopher Valdez

Dated: _____, 2015 _____
Mona Gandhi

Dated: _____, 2015 _____
Marisha Johnston

Dated: _____, 2015 _____
Marshall Tietje

Dated: _____, 2015 _____
Martin Blaqmoor

Dated: _____, 2015 _____
John Browning

APPROVED AND AGREED TO BY DEFENDANTS:

Dated: _____, 2015 TRACFONE WIRELESS, INC.
By: _____
Title: _____

Dated: 2-10-15, 2015 WAL-MART STORES, INC.
By: GREG HALL 
Title: SVP, MERCHANDISING

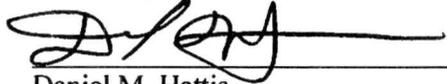
APPROVED AND AGREED TO BY CLASS COUNSEL:

Dated: January 30, 2015



Michael W. Sobol
Lieff Cabraser Heimann & Bernstein LLP

Dated: January 28, 2015



Daniel M. Hattis
Hattis Law

Dated: _____, 2015

John A. Yanchunnis, Sr.
Morgan & Morgan Complex Litigation Group

APPROVED AND AGREED TO BY DEFENDANTS' COUNSEL:

Dated: _____, 2015

Steven J. Brodie
Carlton Fields Jordan Burt, P.A.

Dated: _____, 2015

Joel S. Feldman
Sidley Austin LLP

1215652.2

APPROVED AND AGREED TO BY CLASS COUNSEL:

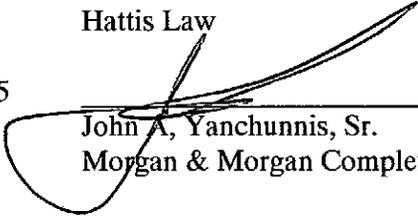
Dated: _____, 2015

Michael W. Sobol
Lief Cabraser Heimann & Bernstein LLP

Dated: _____, 2015

Daniel M. Hattis
Hattis Law

Dated: 1/29/2015, 2015


John A. Yanchunnis, Sr.
Morgan & Morgan Complex Litigation Group

APPROVED AND AGREED TO BY DEFENDANTS' COUNSEL:

Dated: _____, 2015

Steven J. Brodie
Carlton Fields Jordan Burt, P.A.

Dated: _____, 2015

Joel S. Feldman
Sidley Austin LLP

1215652.2

APPROVED AND AGREED TO BY CLASS COUNSEL:

Dated: _____, 2015

Michael W. Sobol
Lief Cabraser Heimann & Bernstein LLP

Dated: _____, 2015

Daniel M. Hattis
Hattis Law

Dated: _____, 2015

John A. Yanchunnis, Sr.
Morgan & Morgan Complex Litigation Group

APPROVED AND AGREED TO BY DEFENDANTS' COUNSEL:

Dated: 1/29/15, 2015

Steven J. Brodie
Carlton Fields Jordan Burt, P.A.

Dated: 1/28/15, 2015

Joel S. Feldman
Sidley Austin LLP

1215652.2

EXHIBIT 1

Were you a Straight Talk, Net10, Simple Mobile, or Telcel America customer?

You may be eligible for a refund.

Consumers have filed a lawsuit, saying that those brands advertised “unlimited” data plans, but then slowed or cut off data service, or terminated all services, for some customers. To settle the case, TracFone Wireless, the company that owns those brands, has agreed to pay refunds to eligible consumers.

To apply for a refund, you must file this Claim Form. You can either:

- Go to www.PrepaidPhoneRefund.com and file online; **or**
- Print this form, fill it out, and mail it to: [-----address-----]

Important: The deadline to file a claim is [DATE].

Your Contact Information

Name _____

Address _____

City _____ State _____ ZIP _____

Email (optional) _____

Confirming Your Eligibility

[Provide the following information and the Settlement Administrator will determine your eligibility.]

Between 7/24/09 and 12/31/14, I had a mobile service plan with “unlimited” data from:

(check one)

Straight Talk

Net10

Simple Mobile

Telcel America

My mobile telephone number for that brand was: () _____

About when did you have that mobile service plan? From: _____ to _____

(Please give your best estimate – for example: January 2010 to March 2010.)

The information I gave on this Claim Form is correct to the best of my knowledge.

Signature

Date

Instructions for Filing a Claim

Please read these instructions carefully. If you don't follow the instructions, you might not be eligible for a refund.

1. What brands are involved in this settlement?

Straight Talk, Net10, Simple Mobile and Telcel America. These brands are owned by TracFone.

2. Am I eligible for a refund?

If you purchased a Straight Talk, Net10, Simple Mobile or Telcel America mobile wireless service plan with "unlimited" data in the United States, and, at any time between July 24, 2009 and December 31, 2014, you had your data usage "throttled" (slowed), "suspended" (cut off), or had all of your services terminated by TracFone prior to the expiration of your service plan, you are eligible for a refund under the settlement if you file a timely claim. While the Court has not yet decided whether to approve the settlement, the window to file a claim is now open. Refunds will be provided to eligible claimants if the Court approves the Settlement.

If you purchased a Straight Talk, Net10, Simple Mobile, or Telcel America "unlimited" plan and want to apply for a refund, but are unsure whether you meet the other eligibility criteria, you should file a claim. The Settlement Administrator supervising the refund program will use the information you provide in the Claim Form to confirm your eligibility for a refund.

3. How much money can I get?

Payments will depend on three things: how many eligible people file claims, when you were a customer, and how your service was affected. The Settlement Administrator supervising the refund program will use company records and the information on your Claim Form to determine who is eligible and how much they will get. For more information, please read the Class Notice, available at www.PrepaidPhoneRefund.com.

4. How do I file a claim?

You have two options:

- Go to www.PrepaidPhoneRefund.com and file online; **or**
- Print this form, fill it out, and mail it to [-----address-----].

If the Settlement Administrator needs more information, you may be contacted directly. If your Claim Form is incomplete or contains false information, you may not be eligible for a refund.

5. What is the deadline for filing a claim?

The deadline to file online is [DATE]. If you file by mail, the postmark deadline is [DATE].

6. Can I file more than one claim?

Yes. If you had more than one phone number with "unlimited" data from Straight Talk, Net10, Simple Mobile or Telcel America between July 24, 2009, and December 31, 2014, you can file a separate Claim Form for each phone number you had. (It's easier to file multiple claims online at www.PrepaidPhoneRefund.com).

7. How will my information be used?

The Settlement Administrator will use the information on this Claim Form only to determine your eligibility for a refund and to send you important notices about the settlement.

8. What is the status of the settlement and where can I get more information?

The court overseeing the class action lawsuits will review the proposed class action settlement, and has not yet decided whether to approve the settlement. Visit www.PrepaidPhoneRefund.com or call (toll-free number) for more information, including about your rights to opt-out of the settlement or object.

EXHIBIT 2

EXHIBIT 2 (Class Notice)

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

If you had a Straight Talk, Net10, Simple Mobile, or Telcel America “Unlimited” Mobile Service Plan, you may be entitled to a cash refund from a class action settlement.

A federal court authorized this notice. This isn't a solicitation from a lawyer and you aren't being sued.

- A settlement has been reached in four class action lawsuits about “unlimited” mobile service plans from Straight Talk, Net10, Simple Mobile, and Telcel America.
- The lawsuits claim that Straight Talk, Net10, Simple Mobile, and Telcel America advertised “unlimited” data plans, but then slowed or cut off data service, or terminated all services, for some customers. The defendants in the case are TracFone Wireless, which owns those four brands, and Wal-Mart. TracFone and Wal-Mart deny all liability and deny that they have violated any laws. The Court hasn't decided whether TracFone or Wal-Mart did anything wrong.
- As a result of the settlement, TracFone has agreed to pay \$40 million to a settlement fund. Eligible consumers will be able to file claims for cash refunds. TracFone also has agreed to improve its advertising and customer service as part of the settlement.
- **You may be eligible for a cash refund if you file a claim.** Further details about whether you qualify and how to file a claim are provided below in this notice.
- Your legal rights are affected whether you act or do not act. Read this notice carefully.

SUMMARY OF YOUR OPTIONS AND LEGAL RIGHTS IN THIS SETTLEMENT	
FILE A CLAIM	This is the only way for you to get a refund under the settlement. You can file a claim online at www.PrepaidPhoneRefund.com , or you can file a claim by mail using the Claim Form at the end of this notice. The deadline to file a claim is [DATE]. See Question 10 below.
EXCLUDE YOURSELF FROM THE SETTLEMENT	You <u>won't</u> receive a refund from the settlement. This is the only option that allows you to retain your right to bring any other lawsuit against TracFone or Wal-Mart about the claims in this case. The postmark deadline to exclude yourself is [DATE]. See Question 17 below.
DO NOTHING	You <u>won't</u> receive a refund from the settlement. You will be giving up rights to be part of any other lawsuit or to make any other claim against TracFone or Wal-Mart about the claims in this case. See Question 21 below.
OBJECT TO THE	Write to the Court if you don't like the settlement. The postmark

SETTLEMENT	deadline to send an objection is [DATE]. See Question 19 below.
ATTEND THE HEARING	Ask to speak in Court about the fairness of the settlement. The deadline to send a notice of intent to appear at the hearing is [DATE]. See Question 26 below.

- These rights and options, and the deadlines to exercise them, are explained in this notice.
- The Court in this case still has to decide whether to approve the settlement. Eligible consumers who file claims will get refunds if the Court approves the settlement and after any appeals are resolved. Please be patient.

For more information, read on or visit www.PrepaidPhoneRefund.com

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BASIC INFORMATION

1. Why is there a notice?

A Court authorized this notice because you have a right to know about the proposed settlement of these class action lawsuits and about all of your options before the Court decides whether to give final approval to the settlement. This notice explains the lawsuits, the settlement, and your legal rights.

The United States District Court for the Northern District of California is overseeing this case. The four class action lawsuits included in the proposed settlement are:

- Hansell v. TracFone Wireless, Inc., et al., Case No. 13-cv-03440
- Gandhi v. TracFone Wireless, Inc., Case No. 13-cv-05296
- Blaqmoor v. TracFone Wireless, Inc., Case No. 13-cv-05295
- Browning v. TracFone Wireless, Inc., et al., Case No. 14-cv-01347

These four lawsuits have been combined, for purposes of the settlement, in a single case called In re TracFone Unlimited Service Plan Litigation, Case No. 13-cv-03440-EMC (N.D. Cal.).

2. What are these lawsuits about?

The lawsuits claim that Straight Talk, Net10, Simple Mobile, and Telcel America advertised “unlimited” data plans, but then slowed or cut off data service, or terminated all services, for some customers. The “Defendants” are TracFone Wireless (which owns those four brands) and Wal-Mart.

The customers who filed the lawsuits are called the “Plaintiffs” or “class representatives.” The complaints filed in the lawsuits, which are available at www.PrepaidPhoneRefund.com, contain all of the allegations and claims asserted against the Defendants in each of the lawsuits.

3. How do TracFone and Wal-Mart respond to the allegations?

TracFone and Wal-Mart maintain that they haven’t violated any laws and that any throttling, suspension, or termination of data services was done in accordance with the terms of service governing all unlimited service plans. In addition, TracFone and Wal-Mart believe that they have other valid defenses, including waiver, estoppel, and that customers suffered no compensable damages. TracFone and Wal-Mart also assert that the claims in the lawsuits are subject to arbitration, rather than adjudication in a court.

4. Has the Court decided who is right?

No. The Court hasn’t decided which of the parties, Plaintiffs or Defendants, is right.

5. Why is this a class action?

In a class action, one or more people, called class representatives, sue on behalf of people who have similar claims. All of the people who have claims similar to the class representatives are members of the “Class,” except for those who exclude themselves.

6. Why is there a settlement?

The Court hasn't decided in favor of either Plaintiffs or Defendants. Instead, both sides agreed to the settlement. By agreeing to the settlement, the parties avoid the costs and uncertainty of a trial, and class members receive the benefits described in this notice. The class representatives and the attorneys appointed to represent the class (called "Class Counsel") believe that the settlement is in the best interest of those affected. The settlement in these class action lawsuits is being administered in conjunction with a settlement between TracFone and the Federal Trade Commission regarding similar issues.

WHO IS IN THE SETTLEMENT?

7. Who is included in the settlement?

You are a "Class Member" if you purchased a Straight Talk, Net10, Simple Mobile, or Telcel America wireless service plan with "unlimited" data in the United States, and, at any time between July 24, 2009 and December 31, 2014, at TracFone's request, your data usage was "throttled" (slowed), suspended (cut off), or all of your services were terminated before the expiration of your service plan.

Defendants are excluded from the Class as well as any entity in which either of the Defendants has a controlling interest, along with Defendants' legal representatives, officers, directors, assignees, and successors. Also excluded from the Class is any judge to whom this action is assigned, together with any relative of such judge, and the spouse of any such persons.

If you were a Straight Talk, Net10, Simple Mobile, or Telcel America "unlimited" plan customer but are unsure whether you meet the other eligibility criteria, file a claim and the Settlement Administrator supervising the refund program will use the information you provide on the Claim Form to confirm your eligibility for a refund.

You may contact the Settlement Administrator, at [TOLL-FREE NUMBER], if you have any questions about whether you are a Class Member.

THE SETTLEMENT'S BENEFITS

8. What benefits does the settlement provide?

As part of the settlement, TracFone has agreed to pay \$40 million to a settlement fund. Eligible consumers who file valid claims will get cash refunds. For details about how to claim a cash refund and about how refunds will be calculated, see Questions 9-12 below.

As part of the settlement, TracFone also has agreed to improve its advertising and customer service to make clearer to customers its throttling and related policies and their impact on customers' mobile service. See Question 15 below. The Settlement Agreement, available at www.PrepaidPhoneRefund.com, includes all of the details about the improvements TracFone has agreed to make.

9. How do I get a cash refund?

To get a cash refund, you must file a valid Claim Form. See Question 10 below, for instructions on how to file a Claim Form. Only eligible people will get refunds.

If you were a Straight Talk, Net10, Simple Mobile, or Telcel America “unlimited” plan customer but are unsure whether you meet the other eligibility criteria, file a claim and the Settlement Administrator supervising the refund program will use the information you provide on the Claim Form to confirm your eligibility for a refund.

10. How do I file a Claim Form and what is the deadline?

You have two options for filing a Claim Form:

- **Online:** You can file a Claim Form online at www.PrepaidPhoneRefund.com
- **By mail:** You can print and fill out the Claim Form that is attached at the back of this notice, and mail your completed Claim Form (with postage) to: [ADDRESS]

You must follow the instructions and provide all of the required information on the Claim Form.

Claim Forms filed online must be filed by [DATE]. Claim Forms filed by mail must be postmarked by [DATE]. If you fail to file online or postmark a Claim Form by [DATE], your claim will be rejected.

11. What happens after a Claim Form is filed?

The Settlement Administrator supervising the refund program will use company records and the information you provide on your Claim Form to determine your eligibility for a refund and your refund amount. If the Settlement Administrator needs more information, it may contact you directly.

12. How will refund amounts be calculated?

Refund amounts will depend on three things: how many people file valid claims, when you were a customer, and how your service was affected.

The refund amount for each consumer with a valid claim will depend on which “Category” they are in on the below Payment Calculation Chart. The Categories are further explained below. You don’t need to choose a Category. The Settlement Administrator will use company records and the information you provide on your Claim Form to determine which Category you are in.

It is expected that valid claimants will receive at least the Minimum Amount listed for their Category in the below Payment Calculation Chart. If the total of all of the payments to valid claimants, as calculated using the Minimum Amounts below, would not use up all of the money in the settlement fund, the refund amounts will be increased as follows: (a) first, refund amounts for Category 1 valid claims will be increased until they are equal to the refund amounts for Category 2 valid claims; and then: (b) refund amounts for all four Categories will be increased proportionately, on a *pro rata* basis, up to the Maximum Amounts listed in the below Payment Calculation Chart.

If the records show that a valid claim falls within more than one Category, the highest number Category will be used to calculate the refund amount for that claim. For example, if a valid claim is in Category 2 and Category 3, it will be treated as Category 3 for purposes of calculating the refund amount.

Payment Calculation Chart

Category	Minimum Amount	Maximum Amount
Category 1	\$2.15	\$45.00
Category 2	\$6.50	\$45.00
Category 3	\$10.00	\$45.00
Category 4	\$65.00	\$65.00

Explanation of Categories

Generally, Categories 1 and 2 include Class Members whose data service was “throttled” (slowed); Category 3 includes Class Members whose data service was suspended (cut off); and Category 4 includes Class Members who had all of their services terminated.

The difference between Category 1 and Category 2 has to do with whether the customer had their data service “throttled” (slowed) before or after October 27, 2013. That date is based on the approximate timing of disclosure changes that TracFone made about “unlimited” plans.

Category 1

Class Members who bought a Straight Talk, Net10, Simple Mobile, or Telcel America brand wireless service plan with “unlimited” data and whose data services were throttled (slowed) at TracFone’s request between October 28, 2013 and December 31, 2014.

Category 2

Class Members who bought a Straight Talk, Net10, Simple Mobile, or Telcel America brand wireless service plan with “unlimited” data and whose data services were throttled (slowed) at TracFone’s request between July 24, 2009 and October 27, 2013.

Category 3

Class Members who bought a Straight Talk, Net10, Simple Mobile, or Telcel America brand wireless service plan with “unlimited” data and whose data services were suspended (cut off) at TracFone’s request between July 24, 2009 and December 31, 2014.

Category 4

Class Members who purchased a Straight Talk, Net10, Simple Mobile, or Telcel America brand wireless service plan with “unlimited” data and who had all of their services terminated at TracFone’s request between July 24, 2009 and December 31, 2014.

You don’t need to choose a Category. The Settlement Administrator supervising the refund program will use company records and the information you provide in your Claim Form to determine which Category you are in and to calculate your refund amount. Please note that for Class Members who had Simple Mobile unlimited plans prior to May 2013, TracFone does not have sufficient data to tell whether their service was throttled, suspended, or terminated. Valid claimants in this group will be designated as Category 1 or Category 2, depending on their dates of service.

13. Can I file more than one claim?

Yes. If you had more than one phone number with “unlimited” data from Straight Talk, Net10, Simple Mobile, or Telcel America between July 24, 2009, and December 31, 2014, you can file a separate Claim Form for each phone number you had. (It’s easier to file multiple claims online at www.PrepaidPhoneRefund.com)

14. When will I receive a refund payment?

Class members who file valid claims will be sent refund payments if the Court grants final approval to the settlement and after any appeals are resolved. Please be patient.

15. What practice changes are included in the settlement?

As part of the settlement, TracFone has also agreed to improve its advertising and customer service to make clearer to customers its throttling and related policies and their impact on customers’ mobile service. These improvements include better disclosures in TracFone’s marketing and packaging about TracFone’s throttling policies, high-speed data caps, and the impact throttling has on customers’ services. They also include improvements to TracFone’s customer service operations to ensure that the throttling policies and their impact are more clearly disclosed to customers, and other steps to ensure that customers are better informed about the policies, how they can monitor their data usage, and about their choices. The Settlement Agreement, available at www.PrepaidPhoneRefund.com, includes all of the details about the improvements that TracFone has agreed to make.

16. What am I giving up to stay in the Class?

If you don’t exclude yourself from the Class by following the process for excluding yourself explained in Question 17, you may make a claim for a refund, but you cannot sue, continue to sue or be part of any other lawsuit against TracFone or Wal-Mart about the issues in this case. It also means that all of the decisions by the Court will apply to you. The Settlement Agreement, available at www.PrepaidPhoneRefund.com, describes all of the claims you are releasing (giving up) by staying in the Class.

EXCLUDING YOURSELF FROM THE CLASS

If you don’t want to make a claim for a refund, and you want to keep the right to sue TracFone or Wal-Mart on your own about the issues in this case, then you must take steps to exclude yourself from the Class. This is sometimes referred to as “opting out” of the Class. If you exclude yourself, you are no longer a Class Member and won’t get a refund through this settlement.

17. How do I exclude myself from the Class?

If you don’t want to be in the Class, you may exclude yourself by writing to the Settlement Administrator. Your request must include the following:

- Your full name, address and telephone number;
- A statement that you want to be excluded from the settlement in In re TracFone Unlimited Service Plan Litigation; and
- Your signature

You must mail your exclusion request, **postmarked by [DATE]**, to:

[Settlement Administrator Address]

18. If I don't exclude myself, can I sue TracFone or Wal-Mart for the same thing later?

No. Unless you exclude yourself, you give up the right to sue TracFone or Wal-Mart about the issues in this case.

OBJECTING TO THE SETTLEMENT

You can tell the Court that you don't agree with the settlement or some part of it.

19. How do I tell the Court if I don't like the settlement?

If you are in the Class and don't exclude yourself, you can object to any part of the settlement, the settlement as a whole, Class Counsel's request for attorneys' fees and expenses, and/or the request for service awards for the class representatives. To object, you must send a letter that includes the following:

- The name of this case, which is In re TracFone Unlimited Service Plan Litigation, No. 13-cv-03440-EMC (N.D. Cal.);
- Your full name, address and telephone number;
- An explanation of the basis upon which you claim to be a Class Member, including: (a) the brand(s) (Straight Talk, Net10, Simple Mobile, or Telcel America) of your mobile service that you believe may have been subject to throttling, suspension, or termination; (b) your mobile telephone number(s) for the brand(s); and (c) the approximate time period when you had that mobile service;
- All grounds for your objection, accompanied by any legal and factual support;
- Whether you are represented by counsel, and if so the identity of such counsel;
- A statement confirming whether you intend to personally appear and/or testify at the Fairness Hearing;
- The identity of any counsel who will appear at the Fairness Hearing on your behalf;
- A list of any witnesses you will call to testify, or any documents or exhibits you will use, at the Fairness Hearing;
- Your signature (an attorney's signature is not sufficient).

To be considered, your objection must be mailed to: [ADDRESS], **postmarked no later than [DATE]**.

If you don't send a timely or complete objection, you will waive all objections to the settlement, and won't be allowed to object to the settlement at the Fairness Hearing or otherwise.

20. What's the difference between objecting to the settlement and excluding myself from the Class?

You object to the settlement when you wish to remain a Class Member and be subject to the settlement, but disagree with some aspect of the settlement. An objection allows your views to be heard in Court.

In contrast, excluding yourself from the Class means that you are no longer a Class Member and don't want the settlement to apply to you. Once excluded, you lose any right to receive a refund from the settlement or to object to any aspect of the settlement because the case no longer affects you.

IF YOU DO NOTHING

21. What happens if I do nothing at all?

If you do nothing, don't expect to receive any refund from the settlement. Some limited number of Class Members for whom TracFone has valid address information may be automatically deemed to have filed a claim, but you should not assume that you will get any refund if you don't file a valid Claim Form. The only way to ensure you are eligible for a refund is if you file a valid Claim Form.

If you do nothing, you will be giving up your rights to be part of any other lawsuit or make any other claim against TracFone or Wal-Mart about the issues in this case. The Settlement Agreement, available at www.PrepaidPhoneRefund.com, describes all of the claims you are releasing (giving up) by remaining in the Class.

THE LAWYERS REPRESENTING YOU

22. Do I have a lawyer representing me in this case?

Yes. The Court has appointed lawyers to represent the Class. They are called "Class Counsel." You won't be charged for these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense. The lawyers appointed as Class Counsel are:

Michael W. Sobol
Lieff Cabraser Heimann & Bernstein, LLP
275 Battery Street, 29th Floor
San Francisco, California 94111

Daniel M. Hattis
Hattis Law
2300 Geng Road, Suite 200
Palo Alto, California 94303

John A. Yanchunis, Sr.
J. Andrew Meyer
Morgan & Morgan Complex Litigation Group,
201 N. Franklin Street, 7th Floor
Tampa, Florida, 33602

The Court has also appointed plaintiffs David Hansell, Edward Tooley, Christopher Valdez, Mona Gandhi, Marisha Johnston, Marshall Tietje, Martin Blaqmoor, and John Browning as “class representatives” to represent the Class in this case.

23. How will Class Counsel be paid?

Class Counsel intends to ask the Court to award attorneys’ fees of up to \$5 million, plus reimbursement of their out-of-pocket litigation expenses of up to \$100,000.

Class Counsel will also ask the Court to award service of awards of \$2,500 each to the eight class representatives, to compensate them for their commitment and efforts on behalf of the Class in this case.

The Court will determine the amount of attorneys’ fees, expenses, and service awards to award. Any attorneys’ fees, expenses, and service awards awarded by the Court will be paid by TracFone in addition to (that is, on top of) the \$40 million settlement fund, and won’t reduce the refunds to Class Members.

Class Counsel’s application for attorneys’ fees, expenses, and class representative service awards is available at www.PrepaidPhoneRefund.com.

THE COURT’S FAIRNESS HEARING

The Court will hold a hearing (the “Fairness Hearing”) to decide whether to approve the settlement and the request for attorneys’ fees, expenses and class representative service awards. You may attend and you may ask to speak, but you don’t have to.

24. When and where will the Court decide whether to approve the settlement?

The Court will hold the Fairness Hearing at __:__ a.m./p.m. on _____, 201_, at the United States District Court for the Northern District of California, 450 Golden Gate Ave, 17th Floor, Courtroom 5, San Francisco, CA 94102. The hearing may be moved to a different date or time without notice, so check for updates at www.PrepaidPhoneRefund.com. At this hearing, the Court will consider whether the settlement is fair, reasonable and adequate. The Court will also consider Class Counsel’s application for attorneys’ fees and expenses and for service awards for the class representatives. If there are objections, the Court will consider them at the hearing. After the hearing, the Court will decide whether to approve the settlement. We don’t know how long the decision will take.

25. Do I have to attend the hearing?

No. You don’t have to attend the Fairness Hearing. Class Counsel will answer any questions the Court may have. If you or your personal attorney would like to attend the Fairness Hearing, you are welcome to do so at your expense. If you send a written objection, you don’t have to come to Court to talk about it. As long as you send your written objection on time, to the proper address, and it complies with the requirements set forth above, the Court will consider it.

26. May I speak at the hearing?

You may ask the Court for permission to speak at the Fairness Hearing. To do so, you must send a letter saying that you intend to appear and wish to be heard. Your Notice of Intent to Appear must include the following:

- Your full name, address and telephone number;
- A statement that this is your “Notice of Intention to Appear” at the Fairness Hearing for the settlement in In re TracFone Unlimited Service Plan Litigation, Case No. 13-cv-03440-EMC (N.D. Cal.);
- The reasons you want to be heard;
- The name of any counsel who will be appearing on your behalf;
- Copies of any papers, exhibits, or other evidence or information that is to be presented to the Court at the Fairness Hearing; and
- Your signature.

You must mail your Notice of Intention to Appear to: [ADDRESS], **postmarked no later than [DATE]**.

GETTING MORE INFORMATION

27. How do I get more information?

This notice summarizes the proposed settlement. You can find more details in the Settlement Agreement. You can get a copy of the Settlement Agreement, read other key case documents, and get more information, at www.PrepaidPhoneRefund.com. You can also call [TOLL-FREE NUMBER] for more information. **DO NOT CONTACT THE COURT.**

EXHIBIT 3

EXHIBIT 3 (Proposed Final Order)

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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 FINAL
APPROVAL OF CLASS SETTLEMENT**

Date:
Time:
Location: Courtroom 5, 17th Floor
Judge: Hon. Edward M. Chen

1 This matter came before the Court for hearing pursuant to the Court's Preliminary
2 Approval Order dated _____, 2015 (Docket No. __), and on the motion for final approval of
3 the Class Settlement Agreement, dated _____, 2015 (the "Settlement"), entered into by the
4 Parties to settle and finally resolve these four consolidated class actions (collectively, the
5 "Action" or the "Class Action Lawsuits")¹, as well as Class Counsel's motion for an award of
6 attorneys' fees and costs and for service awards for the Plaintiffs. Due and adequate notice
7 having been given to the Class of the proposed Settlement and the pending motions, as required
8 by the Preliminary Approval Order, and upon consideration of all papers filed and proceedings
9 had herein, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

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

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

14 3. The "Class" and "Settlement Class Member(s)," for purposes of this Order, shall
15 mean:

16 All persons who purchased, in the United States, a Straight Talk, Net10, Simple
17 Mobile, or Telcel America wireless service plan with "unlimited" data, who, at any
18 time during the Class Period (i.e., from July 24, 2009 through and including
19 December 31, 2014), at TracFone's request, had their data usage Throttled,
20 Suspended, or had all of their Services Terminated prior to the expiration of their
21 service plan.

22 Excluded from the Class are those persons listed on Schedule 1 hereto. [Parties to request that
23 Schedule 1 be filed under seal] The persons listed on Schedule 1 hereto submitted timely and
24 valid requests to be excluded from the Class, according to the Settlement Administrator's
25 records, and are hereby excluded from the Class, are not Settlement Class Members as that term
26 is defined and used herein and shall not be bound by this Order, any release provided herein, or
27 the Final Judgment entered in connection with this Order. Also excluded from the Class are
28 Defendants, any entity in which either of the Defendants has a controlling interest, Defendants'
legal representatives, officers, directors, assignees, and successors, any judge to whom the Class

¹ *Hansell v. TracFone Wireless, Inc., et al.*, Case No. 13-cv-03440-EMC (N.D. Cal.); *Gandhi v. 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 Action Lawsuits are assigned, together with any relative of such judge and the spouse of any
2 such persons.

3 4. The Court finds that the notice provisions set forth under the Class Action
4 Fairness Act, 28 U.S.C. § 1715, were complied with in this Action.

5 5. The Court finds that the program for disseminating notice to the Class provided
6 for in the Settlement, and previously approved and directed by the Court (the “Notice Program”),
7 has been implemented by the Settlement Administrator and the Parties, and that such Notice
8 Program, including the approved forms of notice, constitutes the best notice practicable under
9 the circumstances and fully satisfied due process, the requirements of Rule 23 of the Federal
10 Rules of Civil Procedure and all other applicable laws.

11 6. The Court reaffirms that this Action is properly maintained as a class action, for
12 settlement purposes only, pursuant to Federal Rule of Civil Procedure 23, and that Class Counsel
13 and the Plaintiffs, as class representatives, fairly and adequately represent the interests of the
14 Class. In support of its conclusion that this action is properly maintained as a class action, for
15 settlement purposes, the Court finds as follows: [Discussion regarding Rule 23 factors].

16 7. The Court finds that the Settlement, including the exhibits thereto, is fair,
17 reasonable and adequate to the Settlement Class Members, is in the best interests of the
18 Settlement Class Members, has been entered into in good faith and should be and hereby is fully
19 and finally approved pursuant to Federal Rule of Civil Procedure 23. The Settlement represents
20 a fair resolution of all claims asserted on behalf of Plaintiffs and the Settlement Class Members
21 in this Action, and fully and finally resolves all such claims. Defendants and each Settlement
22 Class Member shall be bound by the Settlement, including the Release set forth in Section VIII
23 of the Settlement, and by this Order and the Final Judgment entered in connection with this
24 Order.

25 8. [Findings required by *Churchill Village LLC v. General Electric Corp.*, 361 F.3d
26 566, 575 (9th Cir. 2004).]

27 9. Class Counsel are hereby awarded attorneys’ fees in the amount of \$_____,
28 and reimbursement of their out-of-pocket litigation costs of \$_____. TracFone shall pay
such amounts to Class Counsel pursuant to the terms of the Settlement Agreement, separate from

1 and in addition to the Settlement Fund. [Findings in support of Class Counsel's fee and cost
2 award]

3 10. The Court hereby awards service awards of \$2,500 each, to Plaintiffs David
4 Hansell, Edward Tooley, Christopher Valdez, Mona Gandhi, Marisha Johnston, Marshall Tietje,
5 Martin Blaqmoor, and John Browning, to compensate them for their commitments and efforts on
6 behalf of the Class in this Action. TracFone shall pay such amounts to Plaintiffs, pursuant to the
7 terms of the Settlement Agreement, separate from and in addition to the Settlement Fund.

8 [Findings in support of service awards]

9 11. [Discussion regarding any objections]. The Court has considered and hereby
10 overrules all objections to the Settlement.

11 12. The Parties and Settlement Administrator are hereby directed to implement the
12 Settlement in accordance with the terms and provisions thereof, including the processing and
13 payment of Claims.

14 13. As of the Final Settlement Date, the Releasing Parties shall be deemed to have,
15 and by operation of this Order and the Final Judgment entered in connection with this Order
16 shall have, fully and irrevocably released and forever discharged the Released Parties from all
17 Released Claims, as more fully set forth in Section VIII of the Settlement.

18 14. As of the Final Settlement Date, Plaintiffs and, by operation of law, each
19 Settlement Class Member shall further be deemed to have waived and released any and all
20 provisions, rights and benefits conferred by Section 1542 of the California Civil Code or similar
21 laws of any other state or jurisdiction.

22 15. The Court orders that, upon the Final Settlement Date, the Settlement shall be the
23 exclusive remedy for any and all Released Claims of the Releasing Parties.

24 16. The Court hereby dismisses this Action and the Class Action Lawsuits with
25 prejudice, and without fees or costs except as provided in the Settlement and this Order.
26 Plaintiffs and all Settlement Class Members are hereby permanently barred and enjoined from
27 commencing, pursuing, maintaining, enforcing or prosecuting, either directly or indirectly, any
28 Released Claims in any judicial, administrative, arbitral or other forum, against any of the
Released Parties, provided that this injunction shall not apply to the claims of any Class

1 Members who have timely and validly requested to be excluded from the Class. This permanent
2 bar and injunction is necessary to protect and effectuate the Settlement, this Order and this
3 Court's authority to effectuate the Settlement, and is ordered in aid of this Court's jurisdiction
4 and to protect its judgments.

5 17. Nothing in this Order or in the Final Judgment entered in connection with this
6 Order shall preclude any action to enforce the terms of the Settlement.

7 18. Without affecting the finality of this Order in any way, the Court hereby retains
8 continuing jurisdiction over: (a) all matters relating to the modification, interpretation,
9 administration, implementation, effectuation and enforcement of the Settlement; (b) further
10 proceedings, if necessary, on Class Counsel's Fee Application and/or the request for service
11 awards for Plaintiffs; and (c) the Parties, Class Counsel and Settlement Class Members for the
12 purpose of administering, supervising, construing and enforcing this Order and the Settlement in
13 accordance with its terms.

14 19. Neither this Order, the Final Judgment entered in connection with this Order, nor
15 the Settlement (nor any other document referred to herein, nor any action taken to carry out this
16 Order or the accompanying Final Judgment) shall be construed as or used as an admission or
17 concession by or against Defendants or Released Parties of the validity of any claim or defense
18 or any actual or potential fault, wrongdoing, or liability whatsoever.

19 20. Without further order of the Court, the Parties may agree to reasonably necessary
20 extensions of time to carry out any of the provisions of the Settlement and to make other non-
21 material modifications, in implementing the Settlement, that are not inconsistent with this Order.

22 21. The Clerk shall enter Final Judgment, consistent with this Order, forthwith.

23 IT IS SO ORDERED.

24 Dated: _____

EDWARD M. CHEN

United States District Judge

EXHIBIT 4

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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] FINAL JUDGMENT

Judgment is hereby entered consistent with the Court’s Order Granting Final Approval to Class Settlement dated _____, 20___. This document constitutes a judgment and a separate document for purposes of Federal Rule of Civil Procedure 58(a).

JUDGMENT APPROVED AS TO FORM BY:

Dated: _____

EDWARD M. CHEN
United States District Judge

JUDGMENT ENTERED: _____, 201_
By: CLERK OF THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

EXHIBIT 5

EXHIBIT 5 (Proposed Preliminary Approval Order)

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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:
Time:
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, dated _____,
3 2015 (the “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 Settlement as Exhibit 1, and approves the procedures set forth in the
5 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 thirty (30) days following the entry of this Order.

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 [90 days following the Notice Date] (hereinafter the
21 “Claim Deadline”). Claim Forms submitted by mail must be postmarked no later than the Claim
22 Deadline.

23 22. Any Class Member who wishes to be excluded from the Class must mail a written
24 request for exclusion to the Settlement Administrator at the address provided in the Class Notice,
25 postmarked no later than [60 days following the Notice Date], and must include: (a) their full
26 name, address and telephone number; (b) a statement that they want to be excluded from the
27 settlement in *In re TracFone Unlimited Service Plan Litigation*; and (c) their signature.

28 23. If the Settlement is finally approved and becomes effective, any Class Member
who does not send a timely and valid request for exclusion shall be a Settlement Class Member

1 and shall be bound by all subsequent proceedings, orders, and judgments in the Class Action
2 Lawsuits, including, but not limited to, the Release, even if he or she has litigation pending or
3 subsequently initiates litigation against Defendants relating to the claims and transactions
4 released in the Class Action Lawsuits.

5 24. Any Settlement Class Member may object to the Settlement, Class Counsel's
6 request for attorneys' fees and expenses ("Fee Application"), and/or any request for service
7 awards for the Plaintiffs. To be considered, an objection must be made in writing, must be
8 mailed to the Settlement Administrator at the address provided in the Class Notice, postmarked
9 no later than [60 days following the Notice Date], and must include the following: (1) the name
10 of this case; (2) the objector's full name, address and telephone number; (3) the basis upon
11 which the objector claims to be a Class Member, including: (a) the brand(s) (Straight Talk,
12 Net10, Simple Mobile, or Telcel America) of the mobile service that the objector believes may
13 have been subject to throttling, suspension, or termination; (b) their mobile telephone number(s)
14 for the brand(s); and (c) the approximate time period when they had that mobile service; (4) all
15 grounds for the objection, accompanied by any legal and factual support; (5) whether the
16 objector is represented by counsel, and if so the identity of such counsel; (6) a statement
17 confirming whether the objector intends to personally appear and/or testify at the Fairness
18 Hearing; (7) the identity of any counsel who will appear at the Fairness Hearing on the
19 objector's behalf; (8) a list of any witnesses the objector will call to testify, or any documents or
20 exhibits they may use, at the Fairness Hearing; and (9) the objector's signature.

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

26. The Settlement Administrator shall promptly after receipt provide to Class

1 Counsel and Defendants' Counsel copies of any requests for exclusion and objections, including
2 any related correspondence.

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

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

13 29. The Parties shall file any motions in support of final approval of the Settlement
14 by no later than [30 days following the Notice Date]. Class Counsel shall file their Fee
15 Application and any request for Plaintiff service awards by no later than [30 days following the
16 Notice Date]. After it is filed, Class Counsel's Fee Application and request for Plaintiff service
17 awards shall be posted on the Settlement Website.

18 30. The Parties shall file any responses to any Settlement Class Member objections,
19 and any reply papers in support of final approval of the Settlement or Class Counsel's Fee
20 Application or request for Plaintiff service awards, by no later than [80 days following the
21 Notice Date].

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

25 32. This Order shall become null and void and shall be without prejudice to the rights
26 of the Parties, all of whom shall be restored to their respective positions existing immediately
27 before the Court entered this Order, if: (a) the Settlement is not finally approved by the Court, or
28 does not become final, pursuant to the terms of the Settlement; (b) the Settlement is terminated
in accordance with the Settlement; or (c) the Settlement does not become effective pursuant to

1 the terms of the Settlement for any other reason. In such event, the Settlement shall become null
2 and void and be of no further force and effect, and neither the Settlement nor the Court's orders
3 relating to the Settlement, including this Order, shall be used for any purpose.

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

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

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

25 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 the Preliminary Approval Order, to the extent TracFone has not already done so in compliance with the Settlement.]
--	--

1	Notice Date	[30 days following entry of the Preliminary Approval Order]
2		
3	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	[30 days following the Notice Date]
4		
5	Opt-Out Deadline	[60 days following the Notice Date]
6		
7	Objection Deadline	[60 days following the Notice Date]
8		
9	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	[80 days following the Notice Date]
10		
11	Claim Deadline	[90 days following the Notice Date]
12		
13	Fairness Hearing	_____, 2015 at _:_ .m. [No earlier than the Claim Deadline]

14
15
16 **IT IS SO ORDERED.**

17
18 Dated: _____

_____ **EDWARD M. CHEN**

United States District Judge

EXHIBIT 6

**If you had a Straight Talk, Net10, Simple Mobile, or Telcel America
“Unlimited” Mobile Service Plan, you may be entitled to a
cash refund from a class action settlement.**

**You must file a claim to receive a cash refund.
Visit www.PrepaidPhoneRefund.com to file a claim.**

A federal court authorized this notice. This isn't a solicitation from a lawyer and you aren't being sued.

This notice may affect your legal rights. Please read it carefully.

Si desea recibir esta notificación en Español, llámenos o visite nuestra página web.

WHAT IS THIS CASE ABOUT? Consumers have filed a class action lawsuit saying that Straight Talk, Net10, Simple Mobile, and Telcel America advertised “unlimited” wireless plans, but then slowed or cut off data service, or terminated all services, for some customers. The defendants in the case, TracFone Wireless (the owner of those four brands) and Wal-Mart, deny all liability.

WHO IS INCLUDED? You're eligible for a refund (meaning that you're a “Class Member”) if you bought a Straight Talk, Net10, Simple Mobile, or Telcel America mobile service plan with “unlimited” data in the United States, and, at any time between July 24, 2009 and December 31, 2014, you had your data usage “throttled” (slowed), suspended (cut off), or had all of your services terminated by TracFone before the expiration of your service plan. **If you had an “unlimited” plan, but aren't sure if your service was throttled (slowed), cut off or terminated, file a claim and the information you provide will be checked against company records to see if you're eligible.**

WHAT DOES THE SETTLEMENT PROVIDE? TracFone has agreed to pay \$40 million to a settlement fund. Class Members who file valid claims (“claimants”) will receive cash refunds from the fund. Refund amounts will depend on three things: the number of claimants, when you were a customer, and how your service was affected. It is expected that refunds will be at least \$2.25 to \$6.50 for claimants who had their data service “throttled,” at least \$10.00 for claimants who had their data service suspended, and \$65.00 for claimants who had all of their services terminated. Actual refund amounts may be different depending on the number of claimants. The Settlement Administrator supervising the refund program will use company records and the information you provide in your Claim Form to determine your eligibility and your refund amount. TracFone also has agreed to improve its advertising and customer service as part of the settlement to make its policies clearer to customers. For more information, visit www.PrepaidPhoneRefund.com.

HOW DO I GET A REFUND? You must file a Claim Form to get a refund. There are two ways to file a Claim

Form: (1) File online, at www.PrepaidPhoneRefund.com; or (2) Print a Claim Form, available at www.PrepaidPhoneRefund.com, fill it out, and mail it (with postage) to the address listed on the Claim Form. **Claim Forms must be filed online or postmarked by [DATE].** If you had more than one phone number with “unlimited” data from Straight Talk, Net10, Simple Mobile or Telcel America between July 24, 2009, and December 31, 2014, you should file a separate Claim Form for each phone number you had. (It's easier to file multiple claims online.)

YOUR OTHER OPTIONS. If you don't want to make a claim, and don't want to be bound by the settlement and any judgment in this case, you must send a written request to exclude yourself from the settlement, postmarked no later than [DATE]. If you exclude yourself, you won't get a refund through this settlement. If you don't exclude yourself and don't submit a claim, you won't receive a refund from the settlement and you will give up the right to sue TracFone or Wal-Mart about the claims in this case. If you don't exclude yourself, you may object to the settlement or to the request for fees by the attorneys representing the Class. The detailed Class Notice, available at www.PrepaidPhoneRefund.com, explains how to exclude yourself or object.

The Court will hold a hearing in the case—*In re TracFone Unlimited Service Plan Litigation*, No. 13-cv-03440-EMC (N.D. Cal.)—on [DATE] at [TIME], to consider whether to approve: (1) the settlement; (2) attorneys' fees of up to \$5 million plus reimbursement of out-of-pocket litigation costs of up to \$100,000, for the attorneys representing the Class, to be paid by TracFone in addition to the \$40 million settlement fund; and (3) service awards of \$2,500 each for the eight class representatives who represented the Class in this case. You may appear at the hearing, but you don't have to. The Court has appointed attorneys (called “Class Counsel”) to represent the Class. These attorneys are listed in the detailed Class Notice. You may hire your own attorney to appear for you, but you will have to pay that attorney.

WHERE CAN I GET MORE INFORMATION? For more information, visit www.PrepaidPhoneRefund.com or call [TOLL-FREE#].

EXHIBIT 7

SMS Notice

For current Straight Talk customers:

STRAIGHT TALK MESSAGE: Cash refunds available. You may be eligible if you had an unlimited service plan. Go to www.PrepaidPhoneRefund.com to learn more.

(152 characters)

For current Net 10 customers:

NET10 MESSAGE: Cash refunds available. You may be eligible if you had an unlimited service plan. Go to www.PrepaidPhoneRefund.com to learn more.

(144 characters)

For current Simple Mobile customers:

SIMPLE MOBILE MESSAGE: Cash refunds available. You may be eligible if you had an unlimited service plan. Go to www.PrepaidPhoneRefund.com to learn more.

(152 characters)

For current Telcel America customers:

TELCEL AMERICA MESSAGE: Cash refunds available. You may be eligible if you had an unlimited service plan. Go to www.PrepaidPhoneRefund.com to learn more.

(153 characters)

EXHIBIT 8

Class Action Settlement Notice

If you had a Straight Talk, Net10, Simple Mobile, or Telcel America “Unlimited” Mobile Service Plan, you may be entitled to a cash refund from a class action settlement.

Comment [A1]: Hyperlink

You must file a Claim Form to receive a cash refund. To file a Claim Form, click here.

Comment [A2]: Hyperlink

For more information, visit www.PrepaidPhoneRefund.com

Si desea recibir esta notificación en Español, llámenos o visite nuestra página web.

Comment [A3]: Hyperlink

WHAT IS THIS CASE ABOUT? Consumers have filed a class action lawsuit saying that Straight Talk, Net10, Simple Mobile, and Telcel America advertised “unlimited” wireless plans, but then slowed or cut off data service, or terminated all services, for some customers. The defendants in the case, TracFone Wireless (the owner of those four brands) and Wal-Mart, deny all liability.

WHO IS INCLUDED? You’re eligible for a refund (meaning that you’re a “Class Member”) if you bought a Straight Talk, Net10, Simple Mobile, or Telcel America mobile service plan with “unlimited” data in the United States, and, at any time between July 24, 2009 and December 31, 2014, you had your data usage “throttled” (slowed), suspended (cut off), or had all of your services terminated by TracFone before the expiration of your service plan. **If you had an “unlimited” plan, but aren’t sure if your service was throttled (slowed), cut off or terminated, file a claim and the information you provide will be checked against company records to see if you’re eligible.**

WHAT DOES THE SETTLEMENT PROVIDE? TracFone has agreed to pay \$40 million to a settlement fund. Class Members who file valid claims (“claimants”) will receive cash refunds from the fund. Refund amounts will depend on three things: the number of claimants, when you were a customer, and how your service was affected. It is expected that refunds will be at least \$2.25 to \$6.50 for claimants who had their data service “throttled,” at least \$10.00 for claimants who had their data service suspended, and \$65.00 for claimants who had all of their services terminated. Actual refund amounts may be different depending on the number of claimants. The Settlement Administrator supervising the refund program will use company records and the information you provide in your Claim Form to determine your eligibility and your refund amount. TracFone also has agreed to improve its advertising and customer service as part of the settlement to make its policies clearer to customers. For more information, visit www.PrepaidPhoneRefund.com.

Comment [A4]: Hyperlink

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Comment [A5]: Hyperlink

YOUR OTHER OPTIONS. If you don’t want to make a claim, and don’t want to be bound by the settlement and any judgment in this case, you must send a written request to exclude yourself from the settlement, postmarked no later than [DATE]. If you exclude yourself, you won’t get a refund through this settlement. If you don’t exclude yourself and don’t submit a claim, you won’t receive a refund from the settlement and you will give up the right to sue TracFone or Wal-Mart about the claims in this case. If you don’t exclude yourself, you may object to the settlement or to the request for fees by the attorneys representing the Class. The detailed Class Notice, available at www.PrepaidPhoneRefund.com, explains how to exclude yourself or object. The Court will hold a hearing in the case—*In re TracFone Unlimited Service Plan Litigation*, No. 13-cv-03440-EMC (N.D. Cal.)—on [DATE] at [TIME], to consider whether to approve: (1) the settlement; (2) attorneys’ fees of up to \$5 million plus reimbursement of out-of-pocket litigation costs of up to \$100,000, for the attorneys representing the Class, to be paid by TracFone in addition to the \$40 million settlement fund; and (3) service awards of \$2,500 each for the eight class representatives who represented the Class in this case. You may appear at the hearing, but you don’t have to. The Court has appointed attorneys (called “Class Counsel”) to represent the Class. These attorneys are listed in the detailed Class Notice. You may hire your own attorney to appear for you, but you will have to pay that attorney.

WHERE CAN I GET MORE INFORMATION? For more information, visit www.PrepaidPhoneRefund.com or call [TOLL-FREE NUMBER].

A federal court authorized this notice. This isn't a solicitation from a lawyer. You aren't being sued.

www.PrepaidPhoneRefund.com

1-XXX-XXX-XXXX

