

Board Office Use: Legislative File Info.	
File ID Number	20-2324
Introduction Date	5/12/21
Enactment Number	21-0768
Enactment Date	5/12/2021 er



Board Cover Memorandum

To Board of Education

From Kyla Johnson-Trammell, Superintendent
Joshua R. Daniels, General Counsel

Meeting Date May 12, 2021

Subject Settlement Awards for the District in *State of California ex rel. OnTheGo Wireless, LLC v. Cellco Partnership d/b/a Verizon Wireless, et al.*

Ask of the Board Acceptance by the Board of Education of two settlement awards for the District from separate defendants in the amount \$2,665.38 and \$25,985.11 (from AT&T and Verizon, respectively), in the matter of the *State of California ex rel. OnTheGo Wireless, LLC v. Cellco Partnership d/b/a Verizon Wireless, et al.*, Sacramento County Superior Court, Case No. 34-2012-00127517, pursuant to the terms and conditions therein

Background A lawsuit was filed by OnTheGo Wireless, LLC on July 5, 2012, pursuant to the California False Claims Act (“CFCA”), on behalf of real parties in interest the State of California and political subdivisions identified therein alleging that the Defendants (including Spring, AT&T, and Verizon) failed to comply with the terms of cooperative purchasing agreements, including the California Wireless Contract (“CWC”) and the Western States Contracting Alliance (“WSCA”) contracts awarded to Defendants to provide wireless equipment and services to California government entities such as school districts. The alleged failure to comply with these provisions resulted in overcharges to those California government customers.

The Board previously approved a preliminary settlement award for the District in the amount of \$2,229.43 (see File ID #: 20-0136/Enactment #: 20-0221) from Sprint, which was subsequently revised to \$2,505.97 (see File ID #: 20-1327/Enactment #: 20-1036).

Discussion The District has since received settlement awards of \$2,665.38 from AT&T and of \$25,985.11 from Verizon. (These are the actual amounts of the checks. The attached documents for each settlement include an estimate of the amount.) To properly accept the awards, the District must execute a Consent Page, consenting to the terms of the Settlement Agreement, including general release, for each award.

Fiscal Impact Revenue of \$28,650.49 (\$2,665.38 + \$25,985.11) to the General Fund.

Attachment(s)

- Settlement Documents with AT&T
- Settlement Documents with Verizon

CONSTANTINE | CANNON

SAN FRANCISCO | NEW YORK | WASHINGTON | LONDON

Wayne T. Lamprey
Anne Hayes Hartman
Ari Yampolsky
(415) 639-4001

June 19, 2020

Oakland Unified School District
Attn: Joshua Daniels
General Counsel
1000 Broadway, Ste 300
Oakland, CA 94607

Re: *State of California ex rel. OnTheGo Wireless, LLC v. Cellco Partnership d/b/a Verizon Wireless, et al.*, Case No. 34-2012-00127517 (Sacramento Superior Court)
Settlement with AT&T: Action Required

Dear Sir or Madam:

The enclosed Notice of Settlement is directed to Oakland Unified School District as a non-intervening real party in interest (“Non-Intervenor”) in the above case, in the form required by order of the Court with respect to a settlement between Plaintiffs and Defendant New Cingular Wireless National Accounts, LLC d/b/a Cingular Wireless, now known as AT&T Mobility National Accounts LLC (“AT&T”).

YOUR RESPONSE TO THIS NOTICE WILL DETERMINE THE AMOUNT OF MONEY THAT OAKLAND UNIFIED SCHOOL DISTRICT WILL RECEIVE AS A RESULT OF THE SETTLEMENT WITH AT&T. The settlement payment to Oakland Unified School District can be calculated from information in the enclosed pleadings. For your convenience, we outline the calculations here:

Total settlement amount for California government entities	\$47,904,307
AT&T revenue from Oakland Unified School District during relevant time period ¹	\$38,067
Share of all AT&T California revenue and settlement for Oakland Unified School District	0.011%

¹ AT&T provided revenue information in discovery, subject to a court confidentiality order. Information about the determination of AT&T revenues and the calculation of total optimizable charges is set forth in the Declaration of Philip Kline in the enclosed pleadings. To review an unredacted version of the Kline Declaration, you must acknowledge the confidentiality designation; please contact us to do so and receive an unredacted copy.

Gross settlement allocation to Oakland Unified School District (0.011% of \$47,904,307)	\$5,196
Requested relator's share of Non-Intervenor recoveries, subject to court approval	43%
Net settlement allocation to Oakland Unified School District after Relator's Share	\$2,962

In order to receive the entire Net Settlement Allocation, Oakland Unified School District must execute the Consent Page, as set forth in the attached, and return it to Plaintiffs' counsel by September 17, 2020. Pursuant to the terms of the settlement, if Oakland Unified School District does not return an executed Consent Page by that date, its **settlement allocation will be reduced by 10%.**

Please note that a separate Consent Page must be returned for each settling defendant.

We encourage you to contact us directly with any questions about the AT&T Settlement or the enclosed notification and documents. You can leave a message for Wayne Lamprey, Anne Hartman, or Ari Yampolsky at (415) 639-4001.

Sincerely,

CONSTANTINE CANNON LLP



Wayne T. Lamprey
Anne Hayes Hartman
Ari Yampolsky
Attorneys for Plaintiffs Regents of the
University of California, et al. and Plaintiff-
Relator OnTheGo Wireless, LLC

Wayne T. Lamprey
Anne Hayes Hartman
Ari Yampolsky
(415) 639-4001

June 19, 2020

Oakland Unified School District
Attn: Joshua Daniels
General Counsel
1000 Broadway, Ste 300
Oakland, CA 94607

Re: **Notice of settlement with defendant New Cingular Wireless National Accounts, LLC d/b/a Cingular Wireless, now known as AT&T Mobility National Accounts LLC (“AT&T”), and distribution of settlement proceeds in *State of California ex rel. OnTheGo Wireless, LLC v. Cellco Partnership d/b/a Verizon Wireless, et al.*, Case No. 34-2012-00127517 (Sacramento Superior Court)**

Dear Sir or Madam:

You are receiving this letter because Oakland Unified School District is a non-intervening real party in interest (“Non-Intervenor”) in *State of California ex rel. OnTheGo Wireless, LLC v. Cellco Partnership d/b/a Verizon Wireless, et al.*, Case No. 34-2012-00127517, which is pending in the Superior Court for Sacramento County. Defendant New Cingular Wireless National Accounts, LLC d/b/a Cingular Wireless, now known as AT&T Mobility National Accounts LLC (“AT&T”), and Plaintiffs have entered into a Settlement Agreement in the case, and Oakland Unified School District has been identified as a party that will receive a share of the AT&T settlement payment.

The lawsuit

The lawsuit was filed by Relator OnTheGo Wireless, LLC on July 5, 2012, pursuant to the California False Claims Act (“CFCA”), on behalf of real parties in interest the State of California and political subdivisions identified therein. The lawsuit, which named several defendants, including AT&T, generally alleged that Defendants failed to comply with the terms of cooperative purchasing agreements the Western States Contracting Alliance (“WSCA”) awarded to Defendants to provide wireless equipment and services to California government entities. As relevant here, Plaintiffs allege the WSCA agreements, and other agreements related to them, required AT&T to provide its California government customers purchasing wireless services pursuant to those agreements with “rate plan optimization reports” and wireless services at the lowest cost available. AT&T’s alleged failure to comply with these provisions resulted in overcharges to those California government customers. AT&T disputes and denies all of the Relator’s allegations and maintains that it complied in full with the WSCA agreements.

The settlement

The parties have agreed to settle this case with respect to AT&T. Copies of documents filed with the Court in support of the settlement, which include the Settlement Agreement and the Court's order approving this notice procedure, are included herewith. Copies of these documents may also be downloaded at: <https://constantinecannon.box.com/v/Non-Intervenor>

To receive the full amount of the share allocated to a Non-Intervenor in the Proposed Allocation, if any, the Non-Intervenor must execute the Consent Page provided in the Addendum and return the executed Consent Page to Plaintiffs' counsel by **September 17, 2020**. By doing so, a Non-Intervenor affirmatively consents to the terms of the Settlement Agreement, including the general release contained therein. Original signatures are not required.

The executed Consent Page may be returned to Plaintiffs' counsel by PDF to:

E-mail to: WirelessOptIn@constantinecannon.com

You will receive a reply confirming receipt of the Consent Page. Please use this address for the submission of Consent Pages only. Contact information for any questions is below.

If a Non-Intervenor does not execute the Consent Page, and therefore does not agree to be bound by the Terms of the Settlement Agreement, then the Non-Intervenor will receive only 90% of the amount allocated to it in the Proposed Allocation.

In addition, Plaintiffs will apply to the Court for a Relator's share pursuant to California Government Code section 12652(g)(3) and attorney fees pursuant to California Government Code section 12652(g)(8). As set forth in the Motion for Approval and the Proposed Allocation, Plaintiffs are requesting a Relator's share of 43% with respect to any amounts allocated to Non-Intervenors, and have entered into a Settlement Agreement with AT&T to receive attorneys' fees.

Hearing

The Court has set a hearing for final approval of the Settlement Agreement for **September 24, 2020, at 11:00am** in Department 92 or 96 of the Sacramento Superior Court, located at 9605 Kiefer Boulevard, Sacramento, California. The purpose of the hearing is to determine whether the terms of the Settlement Agreement – including but not limited to the dismissal of the California Action with prejudice as to AT&T, the releases, and the Proposed Allocation among the Parties, Relator, and Plaintiffs' counsel – are in all respects fair, adequate, and reasonable, and in the best interests of the parties involved, serve the public purposes behind the CFCA, and should be finally approved.

In the event that it becomes necessary to postpone this hearing, then Relator's counsel will, within 5 calendar days of the Court's postponement order, (a) serve the order on you by mail, and (b) make the order available on the website: <https://constantinecannon.box.com/v/Non-Intervenor>

Similarly, in the event that it becomes necessary to disallow in-person appearances at the hearing, then within 5 calendar days of the Court's order requiring any attendance at the hearing to be remote/telephonic rather than in-person, Relator's counsel will (a) serve the order on you by mail, and (b) make the order available on the website. Such service shall include an updated notice that contains meeting identification number(s) and login information, if any, that are necessary for remote attendance.

How to object

The Court has ordered that any Non-Intervenor who objects to the approval of the proposed settlement may appear at the Hearing to show cause why the proposed settlement should not be approved. Pursuant to the Court's order, objections to the settlement shall be heard, and any papers or briefs submitted in support of said objections shall be considered by the Court.

Any Non-Intervenor wishing to make an objection is requested to file written notice of its intention to object, together with supporting papers stating specifically the factual basis and legal grounds of the objection, and to serve copies thereof upon counsel for Plaintiffs and AT&T, on or before September 17, 2020.

Additional information

If you have any questions about this notification and settlement payment, or the terms of the Settlement Agreement, please contact:

Constantine Cannon LLP
150 California Street, Suite 1600
San Francisco, CA 94111
Telephone: (415) 639-4001

Wayne Lamprey wlamprey@constantinecannon.com
Anne Hartman ahartman@constantinecannon.com
Ari Yampolsky ayampolsky@constantinecannon.com

If the recipient of this letter is not an attorney who represents Oakland Unified School District in civil legal proceedings, you may want to consult with such counsel.

Sincerely,

CONSTANTINE CANNON LLP

A handwritten signature in blue ink, appearing to read "Wayne T. Lamprey", is written over a horizontal line.

Wayne T. Lamprey
Anne Hayes Hartman
Ari Yampolsky
Attorneys for Plaintiffs Regents of the
University of California, et al. and Plaintiff-
Relator OnTheGo Wireless, LLC

Consent and Release for Non-Intervenors

1. The undersigned has received and reviewed a copy of the Settlement and Release Agreement executed by and between Defendant New Cingular Wireless National Accounts, LLC d/b/a Cingular Wireless, now known as AT&T Mobility National Accounts LLC (“AT&T”), Relator OnTheGo Wireless, LLC, and the political subdivisions that intervened in *State of California ex rel. OnTheGo Wireless, LLC v. Cellco Partnership d/b/a Verizon Wireless, et al.*, Case No. 34-2012-00127517, which is pending in the Superior Court for Sacramento County (“Settlement Agreement”), the Notice of Proposed Settlement, and the Order of the California Court approving the settlement approval process.

2. The undersigned hereby represents and warrants that he or she is fully authorized to provide binding consent on behalf of the Non-Intervenor identified below.

3. By signing below and returning this document to Plaintiffs’ counsel pursuant to the terms of and by the deadline set forth in the Court’s Order, the identified Non-Intervenor hereby agrees to be bound by the terms of the Settlement Agreement, including specifically the releases contained therein, and to be treated as a Party to the Settlement Agreement for all relevant purposes.

Dated: _____

Signature

Print Name: _____

Title: _____

On behalf of:

Non-Intervenor Name

Wayne T. Lamprey
 Anne Hayes Hartman
 Ari Yampolsky
 (415) 639-4001

June 19, 2020

Oakland Unified School District
 Attn: Joshua Daniels
 General Counsel
 1000 Broadway, Ste 300
 Oakland, CA 94607

Re: *State of California ex rel. OnTheGo Wireless, LLC v. Cellco Partnership d/b/a Verizon Wireless, et al.*, Case No. 34-2012-00127517 (Sacramento Superior Court)
Settlement with Verizon: Action Required

Dear Sir or Madam:

The enclosed Notice of Settlement is directed to Oakland Unified School District as a non-intervening real party in interest (“Non-Intervenor”) in the above case, in the form required by order of the Court with respect to a settlement between Plaintiffs and Defendant Cellco Partnership d/b/a Verizon Wireless (“Verizon”).

YOUR RESPONSE TO THIS NOTICE WILL DETERMINE THE AMOUNT OF MONEY THAT OAKLAND UNIFIED SCHOOL DISTRICT WILL RECEIVE AS A RESULT OF THE SETTLEMENT WITH VERIZON. The settlement payment to Oakland Unified School District can be calculated from information in the enclosed pleadings. For your convenience, we outline the calculations here:

Total settlement amount for California government entities	\$68,231,673
Verizon revenue from Oakland Unified School District during relevant time period ¹	\$584,248
Share of all Verizon California revenue and settlement for Oakland Unified School District	0.074%
Gross settlement allocation to Oakland Unified School District (0.074% of \$68,231,673)	\$50,653

¹ Verizon provided revenue information in discovery, subject to a court confidentiality order. Information about the determination of Verizon revenues and the calculation of total optimizable charges is set forth in the Declaration of Philip Kline in the enclosed pleadings. To review an unredacted version of the Kline Declaration, you must acknowledge the confidentiality designation; please contact us to do so and receive an unredacted copy.

Requested relator's share of Non-Intervenor recoveries, subject to court approval	43%
Net settlement allocation to Oakland Unified School District after Relator's Share	\$28,872

In order to receive the entire Net Settlement Allocation, Oakland Unified School District must execute the Consent Page, as set forth in the attached, and return it to Plaintiffs' counsel by September 17, 2020. Pursuant to the terms of the settlement, if Oakland Unified School District does not return an executed Consent Page by that date, its **settlement allocation will be reduced by 10%.**

Please note that a separate Consent Page must be returned for each settling defendant.

We encourage you to contact us directly with any questions about the Verizon Settlement or the enclosed notification and documents. You can leave a message for Wayne Lamprey, Anne Hartman, or Ari Yampolsky at (415) 639-4001.

Sincerely,

CONSTANTINE CANNON LLP



Wayne T. Lamprey
Anne Hayes Hartman
Ari Yampolsky
Attorneys for Plaintiffs Regents of the
University of California, et al. and Plaintiff-
Relator OnTheGo Wireless, LLC

Wayne T. Lamprey
Anne Hayes Hartman
Ari Yampolsky
(415) 639-4001

June 19, 2020

Oakland Unified School District
Attn: Joshua Daniels
General Counsel
1000 Broadway, Ste 300
Oakland, CA 94607

Re: **Notice of settlement with defendant Cellco Partnership d/b/a Verizon Wireless, and distribution of settlement proceeds in *State of California ex rel. OnTheGo Wireless, LLC v. Cellco Partnership d/b/a Verizon Wireless, et al.*, Case No. 34-2012-00127517 (Sacramento Superior Court)**

Dear Sir or Madam:

You are receiving this letter because Oakland Unified School District is a non-intervening real party in interest (“Non-Intervenor”) in *State of California ex rel. OnTheGo Wireless, LLC v. Cellco Partnership d/b/a Verizon Wireless, et al.*, Case No. 34-2012-00127517, which is pending in the Superior Court for Sacramento County. Defendant Cellco Partnership d/b/a Verizon Wireless (“Verizon”), and Plaintiffs have entered into a Settlement Agreement in the case, and Oakland Unified School District has been identified as a party that will receive a share of the Verizon settlement payment.

The lawsuit

The lawsuit was filed by Relator OnTheGo Wireless, LLC on July 5, 2012, pursuant to the California False Claims Act (“CFCA”), on behalf of real parties in interest the State of California and political subdivisions identified therein. The lawsuit, which named several defendants, including Verizon, generally alleged that Defendants failed to comply with the terms of cooperative purchasing agreements the Western States Contracting Alliance (“WSCA”) awarded to Defendants to provide wireless equipment and services to California government entities. As relevant here, Plaintiffs allege the WSCA agreements, and other agreements related to them, required Verizon to provide its California government customers purchasing wireless services pursuant to those agreements with “rate plan optimization reports” and wireless services at the lowest cost available. Verizon’s alleged failure to comply with these provisions resulted in overcharges to those California government customers. Verizon disputes and denies all of the Relator’s allegations and maintains that it complied in full with the WSCA agreements.

The settlement

The parties have agreed to settle this case with respect to Verizon. Copies of documents filed with the Court in support of the settlement, which include the Settlement Agreement and the Court's order approving this notice procedure, are included herewith. Copies of these documents may also be downloaded at: <https://constantinecannon.box.com/v/Non-Intervenor>

To receive the full amount of the share allocated to a Non-Intervenor in the Proposed Allocation, if any, the Non-Intervenor must execute the Consent Page provided in the Addendum and return the executed Consent Page to Plaintiffs' counsel by **September 17, 2020**. By doing so, a Non-Intervenor affirmatively consents to the terms of the Settlement Agreement, including the general release contained therein. Original signatures are not required.

The executed Consent Page may be returned to Plaintiffs' counsel by PDF to:

E-mail to: WirelessOptIn@constantinecannon.com

You will receive a reply confirming receipt of the Consent Page. Please use this address for the submission of Consent Pages only. Contact information for any questions is below.

If a Non-Intervenor does not execute the Consent Page, and therefore does not agree to be bound by the Terms of the Settlement Agreement, then the Non-Intervenor will receive only 90% of the amount allocated to it in the Proposed Allocation.

In addition, Plaintiffs will apply to the Court for a Relator's share pursuant to California Government Code section 12652(g)(3) and attorney fees pursuant to California Government Code section 12652(g)(8). As set forth in the Motion for Approval and the Proposed Allocation, Plaintiffs are requesting a Relator's share of 43% with respect to any amounts allocated to Non-Intervenors, and have entered into a Settlement Agreement with Verizon to receive attorneys' fees.

Hearing

The Court has set a hearing for final approval of the Settlement Agreement for **September 24, 2020, at 11:00am** in Department 92 or 96 of the Sacramento Superior Court, located at 9605 Kiefer Boulevard, Sacramento, California. The purpose of the hearing is to determine whether the terms of the Settlement Agreement – including but not limited to the dismissal of the California Action with prejudice as to Verizon, the releases, and the Proposed Allocation among the Parties, Relator, and Plaintiffs' counsel – are in all respects fair, adequate, and reasonable, and in the best interests of the parties involved, serve the public purposes behind the CFCA, and should be finally approved.

In the event that it becomes necessary to postpone this hearing, then Relator's counsel will, within 5 calendar days of the Court's postponement order, (a) serve the order on you by mail, and (b) make the order available on the website: <https://constantinecannon.box.com/v/Non-Intervenor>

Similarly, in the event that it becomes necessary to disallow in-person appearances at the hearing, then within 5 calendar days of the Court's order requiring any attendance at the hearing to be remote/telephonic rather than in-person, Relator's counsel will (a) serve the order on you by mail, and (b) make the order available on the website. Such service shall include an updated notice that contains meeting identification number(s) and login information, if any, that are necessary for remote attendance.

How to object

The Court has ordered that any Non-Intervenor who objects to the approval of the proposed settlement may appear at the Hearing to show cause why the proposed settlement should not be approved. Pursuant to the Court's order, objections to the settlement shall be heard, and any papers or briefs submitted in support of said objections shall be considered by the Court.

Any Non-Intervenor wishing to make an objection is requested to file written notice of its intention to object, together with supporting papers stating specifically the factual basis and legal grounds of the objection, and to serve copies thereof upon counsel for Plaintiffs and Verizon, on or before September 17, 2020.

Additional information

If you have any questions about this notification and settlement payment, or the terms of the Settlement Agreement, please contact:

Constantine Cannon LLP
150 California Street, Suite 1600
San Francisco, CA 94111
Telephone: (415) 639-4001

Wayne Lamprey	wlamprey@constantinecannon.com
Anne Hartman	ahartman@constantinecannon.com
Ari Yampolsky	ayampolsky@constantinecannon.com

If the recipient of this letter is not an attorney who represents Oakland Unified School District in civil legal proceedings, you may want to consult with such counsel.

Sincerely,

CONSTANTINE CANNON LLP

A handwritten signature in blue ink, appearing to read "Wayne T. Lamprey", is written over a horizontal line.

Wayne T. Lamprey
Anne Hayes Hartman
Ari Yampolsky
Attorneys for Plaintiffs Regents of the
University of California, et al. and Plaintiff-
Relator OnTheGo Wireless, LLC

Consent and Release for Non-Intervenors

1. The undersigned has received and reviewed a copy of the Settlement and Release Agreement executed by and between Defendant Cellco Partnership d/b/a Verizon Wireless (“Verizon”), Relator OnTheGo Wireless, LLC, and the political subdivisions that intervened in *State of California ex rel. OnTheGo Wireless, LLC v. Cellco Partnership d/b/a Verizon Wireless, et al.*, Case No. 34-2012-00127517, which is pending in the Superior Court for Sacramento County (“Settlement Agreement”), the Notice of Proposed Settlement, and the Order of the California Court approving the settlement approval process.

2. The undersigned hereby represents and warrants that he or she is fully authorized to provide binding consent on behalf of the Non-Intervenor identified below.

3. By signing below and returning this document to Plaintiffs’ counsel pursuant to the terms of and by the deadline set forth in the Court’s Order, the identified Non-Intervenor hereby agrees to be bound by the terms of the Settlement Agreement, including specifically the releases contained therein, and to be treated as a Party to the Settlement Agreement for all relevant purposes.

Dated: _____

Signature

Print Name: _____

Title: _____

On behalf of:

Non-Intervenor Name