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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

DAVID HANSELL, EDWARD TOOLEY, and CHRISTOPHER VALDEZ, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

TRACFONE WIRELESS, INC., d.b.a. STRAIGHT TALK WIRELESS, and WAL-MART STORES, INC.,

Defendants.

Case No. CV 13-3440 EMC

NOTICE OF MOTION AND JOINT MOTION TO CONSOLIDATE RELATED ACTIONS FOR SETTLEMENT PURPOSES; MEMORANDUM OF POINTS AND AUTHORITIES ; ORDER

Date: February 19, 2015
Time: 1:30 p.m.
Courtroom: 5, 17th Floor

Judge: Hon. Edward M. Chen

MARTIN BLAQMOOR, individually and on behalf of all others similarly situated, Plaintiff, v. TRACFONE WIRELESS, INC. Defendant.	Case No. 13-cv-05295-EMC
MONA GANDHI, MARISHA JOHNSTON, and MARSHALL TIETJE, individually and on behalf of all others similarly situated, Plaintiffs, v. TRACFONE WIRELESS, INC. Defendant.	Case No. 13-cv-05296-EMC
JOHN BROWNING, on behalf of himself and all others similarly situated, Plaintiff, v. TRACFONE WIRELESS, INC. and WAL-MART STORES, INC., Defendants.	Case No. 14-cv-01347-EMC

NOTICE OF MOTION

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on February 19, 2015, at 1:30 p.m., in the Courtroom of the Honorable Edward M. Chen, United States District Court, 450 Golden Gate Avenue, 17th Floor, San Francisco, CA 94102, Plaintiffs in the related actions, *Hansell v. TracFone Wireless, Inc. et. al.*, N.D. Cal. Case No. 13-cv-03440-EMC, *Blaqmoor v. TracFone Wireless, Inc.*, N.D. Cal. Case No. 13-cv-05295-EMC, *Gandhi v. TracFone Wireless, Inc.*, N.D. Cal. Case No. 13-cv-05296-EMC and *Browning v. TracFone Wireless, Inc. et. al.*, N.D. Cal. Case No. 14-cv-01347-EMC, will, and hereby do, move the Court to consolidate the four above-captioned actions pursuant to Fed. R. Civ. P. 42(a) into a single caption, *In re TracFone Unlimited Service Plan Litigation*, under the lowest-numbered case of *Hansell v. TracFone Wireless, Inc. et al.*, Case No. 13-cv-03440-EMC.

This motion is based upon the accompanying memorandum, the argument of counsel, all papers and records on file in these matters, and such other matters as the Court may consider.

Dated: February 12, 2015

/s/J. Andrew Meyer
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MEMORANDUM OF POINTS AND AUTHORITIES

Plaintiffs in the related actions, *Hansell v. TracFone Wireless, Inc. et. al.,* N.D. Cal. Case No. 13-cv-03440-EMC, *Blaqmoor v. TracFone Wireless, Inc.,* N.D. Cal. Case No. 13-cv-05295-EMC, *Gandhi v. TracFone Wireless, Inc.,* N.D. Cal. Case No. 13-cv-05296-EMC and *Browning v. TracFone Wireless, Inc. et. al.,* N.D. Cal. Case No. 14-cv-01347-EMC (hereinafter, collectively "Plaintiffs"), through their counsel of record, hereby submit this Motion to Consolidate Related Actions for Settlement Purposes. By this motion, the Plaintiffs respectfully request that the Court consolidate the four above-captioned actions pursuant to Fed. R. Civ. P. 42(a) into a single captioned case, *In re TracFone Unlimited Service Plan Litigation,* using the lowest-numbered case number in *Hansell v. TracFone Wireless, Inc. et al.,* Case No. 13-cv-03440-EMC.

I. RELEVANT BACKGROUND

This motion concerns four related class actions that are currently pending before this Court, three of which (*Hansell, Blaqmoor,* and *Gandhi*) were originally filed in this District and were previously ordered related by this Court pursuant to Civil Local Rule 3-12, and the other of which (*Browning v. TracFone Wireless, Inc. et al.*, N.D. Cal. Case No. 14-cv-01347-EMC) was originally filed in the Southern District of Florida and has now been transferred to this Court. All four actions involve an identical defendant, TracFone Wireless, Inc. ("TracFone"), and all four actions involve class claims stemming from substantially the same alleged misconduct which includes, among other things, advertising cell phone plans as providing "unlimited" data when in actuality Defendants throttled, suspended or terminated customers' data services if a customer exceeded an undisclosed data threshold.

II. THE COURT SHOULD CONSOLIDATE THE RELATED ACTIONS PURSUANT TO FED.R.CIV.P. 45(a)

Under Federal Rule of Civil Procedure 42(a), the Court has broad discretion to consolidate actions if they "involve a common question of law or fact." Fed. R. Civ. P. 42(a); *Investors*

Research Co. v. U.S. Dist. Court for Cent. Dist. of Cal., 877 F.2d 777, 777 (9th Cir. 1989). In deciding whether to consolidate actions, courts should weigh "the saving of time and effort consolidation would produce against any inconvenience, delay, or expense that it would cause." *Huene v. U.S.*, 743 F.2d 703, 704 (9th Cir. 1984).

The *Hansell, Blaqmoor, Gandhi and Browning* actions should be consolidated pursuant to Fed.R.Civ.P. 42(a). All four actions involve a common defendant and are predicated on substantially similar conduct and factual allegations – *i.e.,* TracFone's advertising of "unlimited" plans and contrary policies and practices of throttling, suspending, and terminating customers' data access when customers exceed undisclosed, internally set limits. All four actions involve substantially similar legal claims. Moreover, the parties in all four actions have entered into a Class Action Settlement Agreement which is presently before this Court for consideration pursuant to Plaintiffs' Motion for Preliminary Approval of Class Action Settlement. This Class Action Settlement Agreement is designed to resolve all four cases by providing certain settlement benefits including cash payments from a $40 million settlement fund and certain practice changes by Defendant TracFone. These actions should be consolidated due to their factual and legal similarities as well as the fact that all are being resolved under the same Class Action Settlement Agreement. Indeed, the Class Action Settlement Agreement provides that these four actions should be consolidated into a single caption under the lower-numbered case, *Hansell v. TracFone Wireless, Inc. et al.*, N.D. Cal. Case No. 13-cv-03440-EMC. These actions should also be consolidated because doing so will promote judicial economy as it will permit the Court to consider the pending motion for preliminary approval in a single case, reduce potential confusion, and save the parties and the Court time and expense.

III. CONCLUSION

For the foregoing reasons, the Plaintiffs in all four of the above captioned actions respectfully request that the Court consolidate them pursuant to Fed. R. Civ. P. 42(a) into a single captioned case, *In re TracFone Unlimited Service Plan Litigation,* using the lowest-numbered case number of the four cases, *i.e., Hansell v. TracFone Wireless, Inc. et al.*, Case No. 13-cv-03440-EMC.

Dated: February 12, 2015

/s/J. Andrew Meyer
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Attorneys for Plaintiffs in Hansell, Gandhi, and Blaqmoor

IT IS SO ORDERED:

Edward M. Chen
U.S. District Judge

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
IT IS SO ORDERED
Judge Edward M. Chen