

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
SOUTHERN DIVISION

FILED
APR 17 2006
BY
CLERK OF COURT
DEPUTY

WALTER E. KLINGER, on behalf)
himself and all similarly situated persons)
)
)
Plaintiff,)
)
vs.)
)
MOTOROLA, INC.)
)
Defendant.)

Case No. 04-3551-RWT

**FINAL ORDER AND JUDGMENT APPROVING CLASS ACTION SETTLEMENT,
GRANTING FINAL CERTIFICATION OF THE SETTLEMENT CLASS AND
APPROVAL OF THE PARTIES SEPARATELY NEGOTIATED PAYMENT OF
PLAINTIFF'S ATTORNEY'S FEES AND EXPENSES TO BE PAID BY THE
DEFENDANT.**

This matter is before the Court for entry of a Final Order and Judgment Approving the Class Action Settlement, Granting Final Certification of the Settlement Class, and Approval of the Parties Separately Negotiated Payment of Plaintiff's Attorney's Fees and Expenses to Be Paid by the Defendant.

WHEREAS, Plaintiff and Defendant entered into a Settlement Agreement (Exhibit 1 to Plaintiff's Motion for Preliminary Approval)(hereinafter referred to as "Settlement Agreement")¹ to settle this class action; and

WHEREAS, the Court entered an Order Preliminary Approving the Settlement ("Preliminary Approval Order") preliminary certifying the class for settlement purposes, ordering publication of Notice to potential Class Members, scheduling a Final Approval Hearing,

¹ The capitalized terms used in this Order shall have the same meaning as used in the Settlement Agreement.

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and providing persons with the opportunity to either exclude themselves from the Settlement Class or to object to the Proposed Settlement; and

WHEREAS, the Court held a Final Approval and Fairness Hearing on April 17, 2006; and

WHEREAS, the Court has issued or will issue Findings of Fact and Conclusions of Law Approving Class Action Settlement, granting Final Certification of the Settlement Class, approving the Proposed Settlement, overruling the one objection filed to this Settlement and dismissing the Settlement Class members claims;

NOW, THEREFORE, based on the submissions of the parties and Class Members, on the testimony adduced at the Fairness Hearing, and on this Court's Findings of Fact and Conclusions of Law, it is hereby determined ORDERED AND ADJUDGED:

1. Incorporation of Other Documents. This Order Approving Class Action Settlement hereby incorporates by reference and makes a part hereof:

(a) the Settlement Agreement and Exhibits thereto;

(b) the Plaintiff's Submission in Support of Final Approval of the Settlement and Exhibits thereto;

(c) All other pleadings filed with the Court concerning the Settlement, including the objections thereto; and

(d) This Court's Findings of Fact and Conclusions of Law filed contemporaneously herewith.

2. Jurisdiction. This Court has personal jurisdiction over all Class Members (as defined below) and has subject matter jurisdiction over this action, including, without limitation jurisdiction to approve the Settlement, to grant final certification to the Class, to settle and

release all claims arising out of the transactions as alleged in the Amended Complaint, to make the adjudications required under paragraph 18 below, and dismiss this action on the merits and with prejudice.

3. Final Class Certification. The Class this Court previously certified preliminarily is hereby finally certified for settlement purposes pursuant to Fed. R. Civ. P. 23(b)(3). The Class consists of all persons and entities who purchased a StarTac cellular series telephone and replaced the external retractable antenna within 24 months of purchase.

4. Adequacy of Representation. The law firm of Heideman Nudelman & Kalik, P.C. and the Class representative have fully and adequately represented the Class for purposes of entering into and implementing the Settlement and have satisfied the requirements of Fed. R. of Civ. P. 23(a)(4). Counsel shall have no liability arising out of the administration of the Settlement or the distribution of the proceeds thereof, other than for willful misconduct.

5. Class Notice. The Court finds that the Class Notice and the publication of the Notice in accordance with the terms of the Settlement Agreement and this Court's Preliminary Approval Order, and as explained in the affidavits filed prior to the Final Approval Hearing:

- (a) Constituted the best practicable notice to Class Members under the circumstances of this action;
- (b) Was reasonably calculated, under the circumstances, to apprise Class Members of (i) the pendency of this class action, (ii) their right to exclude themselves from the Class and the proposed Settlement, (iii) their right to object to any aspect of the proposed Settlement (including final certification of the Class, the fairness, reasonableness or adequacy of the proposed settlement, the adequacy of the Class's representation by Plaintiff's or Plaintiff's counsel, and/or the award of attorneys fees and expenses),

- (iv) their right to appear at the Final Approval Hearing – either on their own or through counsel hired at their own expense – if they did not exclude themselves from the Class, and (v) the binding effect of the Orders and Judgments in this action, whether favorable or unfavorable, on all persons who do not timely and properly request exclusion from the Class;
- (c) Was reasonable and constituted due, adequate and sufficient notice to all persons entitled to be provided with notice, and
- (d) Fully satisfied the requirements of the Federal Rules of Civil Procedure (including Fed. R. of Civ. P. 23(c)(2) and (e)), the United States Constitution (Due Process Clause), the Rules of this Court and other applicable law.

6. Final Settlement Approval. The terms and provisions of the Settlement Agreement, including all exhibits, have been entered into in good faith and are hereby fully and finally approved as fair, reasonable and adequate as to, and in the best interests of, each of the parties and the Class Member, and in full compliance with all applicable requirements of the Federal Rules of Civil Procedure, the United States Constitution (Due Process Clause) and any other applicable law. The parties and Class Members are hereby directed to forthwith implement and consummate the Settlement Agreement according to its terms and provisions. The Court notes that one objection was timely filed. While the Court finds that the overall number of objections is extremely low, compared to the millions of potential Class Members, the Court has carefully reviewed the stated concerns of the one objector and has given this objection full consideration. Nevertheless, as explained in this Court's Findings of Fact and Conclusions of Law, and without the need to further discuss this individual objection, this Court overrules the substance of the objection submitted to the Court.

7. Early Implementation Allowed. Motorola is hereby authorized, in consultation with Lead Counsel and without requiring further approval of this Court, but is not required, to proceed with the immediate implementation of the Settlement before the Final Settlement Date (as defined in the Settlement Agreement) in which case all provisions in the Settlement Agreement specifying actions to be taken on or after the Final Settlement Date shall, to the extent necessary, be deemed to provide that those actions shall be taken on or after the date that Motorola elects to implement the Settlement.

8. Appeal After Early Implementation. If Motorola chooses to exercise its discretion to implement the Settlement before the Final Settlement Date, anyone seeking to appeal this Court's rulings must first (i) move to intervene upon a representation of inadequacy of counsel, (ii) request a stay of the implementation of the Settlement, and (iii) post an appropriate bond. Absent satisfaction of all three of these requirements, Motorola is authorized to implement the Settlement before the Final Settlement Date even if such implementation would moot any appeal.

9. Securities Registration Not Required. The Court acknowledges that, by virtue of its approval of the terms and conditions of the Settlement Agreement, to the extent that any aspect of the relief granted may constitute securities under the Securities Act of 1933, 15 U.S.C. §§77 et seq. (the "1933 Act"), the benefits will be exempt from registration under the 1933 Act as securities "issued in exchange for one or more bona fide...claims" pursuant to section 3(a)(10) of the 1933 Act. 15 U.S.C. §77c(a)(10).

10. Binding Effect. The terms of the Settlement Agreement and of this Order and the Final Judgment shall be forever binding on the Plaintiff and all other Class Members, as well as their heirs, executors and administrators, personal representatives, successors and assigns, and those terms shall have *res judicata* and other preclusive effect in all pending and future claims,

lawsuits or other proceedings maintained by or on behalf of any such persons, to the extent those claims, lawsuits or other proceedings involve matters that were or could have been raised in this action or are otherwise encompassed by the Release.

11. Release. The Release set forth in the Settlement Agreement is expressly incorporated herein in all aspects, is effective as of the date of this Order and the Final Judgment, and forever discharges the Released Parties from any claims or liabilities arising from or related to the Released Transactions.

12. Permanent Injunction. All Class Members, individually, collectively or otherwise, and those purporting to act on their behalf, who have not been timely excluded from the Class are hereby permanently barred and enjoined (i) from filing, commencing, prosecuting, continuing, litigating, intervening in, participating in, as a class members, as individuals or otherwise, or seeking to certify a class in, or organizing owners of StarTac cellular telephones into a separate class of persons, as purported class action (including by seeking to amend a pending complaint to include class allegations) in or receiving any benefits or other relief from, any other lawsuit, arbitration or administrative, regulatory or other proceeding or order in any jurisdiction, based on or relating to the claims and causes of action, or the facts and circumstances relating thereto, asserted in or arising out of the underlying Action, or other actions and/or the Released Transactions as to the cellular telephones which qualify them as Class Members, and (ii) from filing, commencing, construing, or prosecuting any other lawsuit as a class action (including by seeking to amend a pending complaint to include class allegations or by seeking class certification in a pending action in any jurisdiction on behalf of Class Members who have not timely excluded themselves from the Class) if such other lawsuit is based on or relates to any of the claims and causes of action, facts and circumstances relating thereto, in this Action, other

actions and/or the Released Transactions. The Court finds that the issuance of this permanent injunction is necessary and appropriate in aid of the Court's jurisdiction over the action to protect and effectuate the Court's Final Judgment.

13. Enforcement of Settlement. Nothing in this Order or the Final Judgment shall preclude any action to enforce the terms of the Settlement Agreement, including participation in any of the processes detailed therein.

14. Approval and Payment of Attorney's Fees and Expenses. Attorney's fees and reimbursement of out of pocket expenses in the aggregate combined sum of \$2.95 million, which Motorola has agreed to pay are hereby approved are ordered to be paid by Motorola to Lead Counsel as set forth in the Settlement Agreement.

15. Incentive for the Class Representative. The Court recognizing the time commitment and efforts of the Class Representative to secure relief on behalf of all Class Members. The Court approves the requested award of \$1,000 to Walter Klinger, which Motorola is ordered to pay directly to him.

16. No Other Payments. The preceding paragraphs of this Order covers, without limitation, any and all claims for attorney fees and expenses, costs or disbursements incurred by Lead Counsel or any other counsel representing Plaintiff or Class Members in this action or incurred by Plaintiff or the Class Members, or any of them, in connection with or related in any manner to this Action, the administration of such Settlement, and/or Released Transactions except to the extent otherwise specified in this order and in the Settlement Agreement.

17. Modification of the Settlement Agreement. Lead Counsel and the Defendant, without further approval from the Court, are authorized to agree to and adopt such amendments, modifications, supplementations and expansions of the Settlement Agreement and all exhibits

attached thereto as (i) are consistent with this Final Order and Judgment; and (ii) do not limit the rights of Class Members under the Settlement Agreement.

18. Retention of Jurisdiction. The Court has jurisdiction to enter this Order and the Final Judgment. Without in any way affecting the finality of this Order and the Final Judgment, this Court expressly retains exclusive jurisdiction over the administration, consummation, enforcement and interpretation of the Settlement, to supervise the Settlement relief, to protect and effectuate the Final Order and Judgment, and for any other necessary purpose, including, without limitation:

- (a) Enforcing the terms and conditions of the Settlement Agreement and resolving any disputes, claims or causes of action, that in whole or in part, are related to or arise out of the Settlement Agreement, this Order and Final Judgment (including without limitation, whether a person or entity is or is not a Class Member, whether a person or entity has properly opted out of the Class, whether any individual or entity has made any misrepresentations or engaged in any other improper conduct in connection with the opt-out process, whether the claims or causes of action allegedly related to this case are or are not barred by this Order and Final Judgment, whether any attorney has violated any duty owed and/or alleged to be owed);
- (b) Over any claims, causes of action or litigation directed against the attorneys for the Class or the Defendant that do or could arise out of this Order Approving the Class Settlement;
- (c) Entering such additional Orders as may be necessary or appropriate to protect or effectuate the Court's Order and Final Judgment approving the Settlement Agreement, dismissing all claims on the merits and with prejudice, and permanently

enjoining Class Members from initiating or pursuing related proceedings, or to ensure the fair and orderly administration of this settlement; and

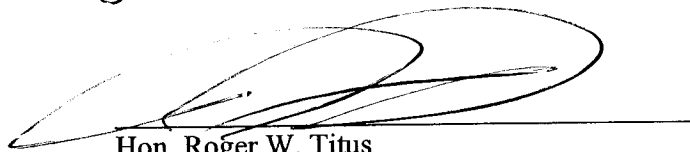
(d) Entering any other necessary or appropriate Orders to protect and effectuate this Court's retention of continuing jurisdiction.

19. No Admissions. Neither this Order and Final Judgment nor the Settlement Agreement (nor any other document referred to her, nor any action taken to carry out this Order and Final Judgment), nor the Court's Findings of Fact and Conclusions of Law are to be construed as, or may be used as an admission or concession by or against Motorola of, or ruling on, the validity of any claim or any actual or potential fault, wrongdoing or liability whatsoever. Entering into or carrying out the Settlement Agreement, and any negotiations or proceedings related thereto, shall not in any event be construed as, or deemed as evidence of, an admission or concession as to Motorola's denials or defenses and shall not be offered or received in evidence in any action or proceeding against any party hereto in any court, administrative agency or other tribunal for any purpose whatsoever, except as evidence of the Settlement or to enforce the provisions of this Order and Final Judgment and the Settlement Agreement; *provided however*, that this Order and Final Judgment and the Settlement Agreement may be filed in any action against or by Motorola or Released Parties (as defined in the Settlement Agreement) to support a defense of *res judicata*, collateral estoppel, release, waiver, good faith settlement, judgment bar or reduction, full faith and credit, or any other theory of claim preclusion, issue preclusion or similar defense or counterclaim.

20. Dismissal of Action. This action, including all individual and Class claims resolved in it, is hereby **DISMISSED** on the merits, **WITH PREJUDICE**, against the Defendants, without fees or costs to any party except as otherwise provided in this Order and Final Judgment.

21. Final Judgment. The foregoing, as set forth hereinabove, does hereby constitute a Final Judgment, it is hereby **ORDERED AND ADJUDGED that the same shall be forthwith ENTERED** upon the record by the Clerk of Court and shall constitute a **FINAL** appealable Order and Judgment in accordance with Fed. R. of Civ. P. 58, there being no just cause nor reason for delay.

IT IS SO ORDERED, ADJUDGED AND ENTERED AS A FINAL JUDGMENT on this the 17th day of April, 2006.

A large, stylized handwritten signature in black ink, appearing to read 'R. Titus', is written over a horizontal line.

Hon. Roger W. Titus
United States District Court