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And the Certified Class
7

8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**

10
11 Wineesa Cole, individually and on
behalf of all others similarly situated,

12 Plaintiff,

13 vs.

14 Asurion Corporation, a Delaware
15 Corporation, Asurion Insurance
Services, Inc., a Tennessee
16 Corporation, T-Mobile USA, Inc., a
Delaware Corporation, Liberty Mutual
17 Insurance Company, a Massachusetts
Corporation, and DOES 1 through 500,

18 Defendants.
19

Case No. CV-06-6649-R (JCx)

Before The Honorable Manuel L. Real

Notice of Unopposed Motion and
Unopposed Motion for Preliminary
Approval of Class Action Settlement

Date: December 7, 2015

Time: 10:00am

Courtroom: 8

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE THAT on December 7, 2015, at 10:00am in the
3 courtroom of the Honorable Manuel L. Real, Courtroom 8, Plaintiff Wineesa Cole
4 will apply to this Honorable Court for entry of an Order:

5 1. Preliminarily approving the Settlement Agreement reached between
6 Plaintiff and Defendants attached as Exhibit 2 to the Declaration of Taras Kick in
7 Support of the Unopposed Motion for Preliminary Approval;

8 2. Appointing Kurtzman Carson Consultants as the Settlement
9 Administrator and approving the proposed notice plan; and

10 3. Scheduling a hearing for final approval of the settlement.

11 This motion is made on the grounds that the settlement is the product of
12 arms-length negotiations by informed counsel and is fair, reasonable and adequate.

13 Class counsel met and conferred with counsel for Defendants about the
14 motion, and Defendants do not oppose the motion.

15 This motion is based on this Notice of Motion and Motion; the Memorandum
16 of Points and Authorities; the accompanying Declaration of Taras Kick; the
17 accompanying Declaration of Daniel Linde; the accompanying Declaration of
18 Jonathan Carameros of the proposed claims administrator; other documents and
19 papers on file in this action; and, such other materials as may be presented before or
20 at the hearing on this motion, or as this Honorable Court may allow.

21 Dated: November 2, 2015

Respectfully submitted,

22 The Kick Law Firm, APC

23
24 By: s/Taras Kick
25 Taras Kick
26 James Strenio
27 Thomas Segal
28 Attorneys For Plaintiff Wineesa Cole
And the Certified Class

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Before The Honorable Manuel L. Real

Plaintiff's Unopposed Memorandum and
Points of Authorities in Support of
Motion for Preliminary Approval of Class
Action Settlement

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY.

After more than nine years of strongly contested litigation, including the use of four different mediators, the parties have reached a settlement of this already certified class action. The settlement resolves allegations that defendants Asurion Corporation and T-Mobile USA, Inc. (“Defendants”) failed in the course of marketing handset insurance to adequately disclose certain material terms of the program, including that claims can be fulfilled using refurbished phones.

The Defendants have agreed to pay \$4.2 million into a Settlement Fund to end the class action lawsuit. The Settlement Fund will be used to pay Class Counsel’s fees and expenses, a service award to the named plaintiff, and the Claims Administrator’s fees and costs, and to make payments to Class Members. The portion of the Settlement Fund available to make payments to Class Members is called the Net Settlement Fund. Each Class Member who submits a valid claim will receive an equal share of the Net Settlement Fund, up to a cap of \$124, which represents an estimated maximum average recovery that the Class Members could have recovered by proceeding to trial. The size of the payment received by each Class Member who submits a valid claim will depend on the size of the Net Settlement Fund and the number of Class Members who submit valid claims. No money will revert to the Defendants. Any residue will go to a charitable organization to be approved by this Honorable Court.

The litigation also resulted in changes to Asurion’s business practices in the form of improved disclosures to consumers at the point of sale on the issues related to this lawsuit.

This Honorable Court had issued an order staying the case pending most class members first going through a non-binding arbitration before being allowed to be members of the class in the class action. With this Honorable Court’s permission, Plaintiff had appealed that order to the 9th Circuit, and that appeal had

1 been briefed and argued. On Monday, October 26, 2015, the 9th Circuit stated that a
2 member of the panel which heard the argument had asked for *en banc*
3 consideration. That request was pending when on October 26, 2015, the parties
4 filed with the 9th Circuit a “Stipulation to Dismiss Appeal Without Prejudice to
5 Reinstatement.” (Declaration of Taras Kick [hereafter “Kick Decl.”], ¶ 4.) In this
6 filing the parties informed the 9th Circuit of their imminent settlement. (Kick Decl.
7 ¶ 4.) The next day, on October 27, 2015, the 9th Circuit panel before which this
8 matter was pending issued an Order stating it was construing the filing as a motion
9 for limited remand, and as such granting the motion and remanding the appeal to
10 this district court for the limited purpose of enabling the district court to consider
11 whether it is willing to approve the parties’ proposed settlement, without prejudice
12 to reinstatement in the event the settlement is not approved. (Kick Decl. ¶ 4, Ex. 1.)
13 The 9th Circuit further stated in its October 27, 2015, Order that, “If the parties
14 inform this Court that the settlement will be approved, the appeal will be
15 dismissed.” (Kick Decl. ¶5, Ex. 1.)

16 Therefore, the \$4.2 million settlement not only is a very good result for the
17 class members on its own terms, but also removes all of the additional risk arising
18 from its current posture. For example, if the order staying the case had been
19 affirmed on appeal, the class members would likely have lost their ability to
20 proceed as a class in federal court.

21 Also notable for purposes of preliminary approval is that before the motion to
22 compel individual arbitration was granted, this case was on the eve of trial. In fact,
23 the case had been scheduled for trial several times. (Kick Decl. ¶ 12.) Plaintiff had
24 obtained class certification. (Docket Entry 644, April 19, 2010, Order on Motion
25 for Class Certification.) The parties reviewed over a hundred thousand pages of
26 documents, and deposed multiple percipient and expert witnesses. (Kick Decl. ¶¶
27 17 - 21.) The parties had briefed motions to dismiss and motions for summary
28 judgment which the Court granted in part and denied in part. (Docket Entries 51,

68, 165, 395, 661.) The parties utilized the services of four different mediators during the course of this litigation. (Kick Decl. ¶¶ 24, 25.) The present settlement is the result of a mediator's proposal made by the last mediator on this matter, The Honorable Peter Lichtman, Retired, the former chief settlement judge for the Los Angeles County Superior Court complex cases program (Central Civil West). (Kick Decl. ¶ 25.) The parties' counsel are experienced in these sorts of cases, and were extremely well informed when they entered into the proposed arms' length settlement. (Kick Decl. ¶¶ 2, 24 - 25.)

In summary, the proposed settlement is an excellent result to a hard fought and complex case. This Honorable Court is respectfully requested to grant preliminary approval so that the class can be notified of the settlement and a hearing on the fairness of the settlement can be conducted.

II. BACKGROUND.

A. PROCEDURAL HISTORY.

The complaint in this action was filed on October 10, 2006. (Docket Entry 1.) The Complaint alleged that Defendants engaged in deceptive advertising by selling handset insurance and representing that the replacement phones will be of "like, kind, quality and value" to the lost phone without disclosing that the replacement phones were sometimes refurbished rather than new, and also might differ in other ways. (Docket Entry 1, Complaint ¶ 6, ¶¶ 17-20.) On November 28, 2006, Plaintiff filed a First Amended Complaint. (Docket Entry 7.)

On January 31, 2007, Defendants filed a motion to dismiss the First Amended Complaint. (Docket Entry 22.) Among other things, Defendants argued that the class allegations should be dismissed because class members were subject to a contractual provision requiring arbitration of their claims.

On February 20, 2007, Plaintiff filed an opposition to the motion. (Docket Entry 37.) On July 27, 2007, the district court entered an order granting in part and denying in part Defendants' motion to dismiss. (Docket Entry 51.) The district

1 court ordered the parties to submit further briefing on the effect of the arbitration
2 provision in the handset insurance policy on the class allegations in the First
3 Amended Complaint. (*Id.*)

4 On or about September 27, 2007, the district court entered an order striking
5 the class allegations from the First Amended Complaint without prejudice. (Docket
6 Entry 68.) On October 3, 2007, Plaintiff filed a motion requesting clarification as
7 to whether the district court meant that only the named class representative need go
8 through the non-binding arbitration and then can represent absent class members in
9 the class action, or whether each absent class member was required to go through
10 the non-binding arbitration to be able to be a member of the class in the class action
11 suit. (Docket Entry 70.) On October 12, 2007, Plaintiff filed a Second Amended
12 Complaint. (Docket Entry 74.) On November 13, 2007, the district court entered
13 an order clarifying that only the named Plaintiff needed to arbitrate her claims, and
14 then can go forward with the class action on behalf of absent class members even
15 though the individual members of the class had not gone through a non-binding
16 arbitration. (Docket Entry 83.) The named Plaintiff submitted her claims to non-
17 binding arbitration. (Kick Decl. ¶ 9.) After the non-binding arbitration was
18 completed, this litigation resumed. (*Id.*)

19 On January 30, 2009, Plaintiff filed a Third Amended Complaint. (Docket
20 Entry 130.) On October 7, 2009, Defendants filed a motion for partial summary
21 judgment as to the fraud and deceptive advertising claims in the case, arguing that
22 the insurance program brochure adequately disclosed that claims may be fulfilled
23 with refurbished phones. (Docket Entry 251.) Plaintiff filed an opposition on
24 November 2, 2009. (Docket Entry 287.) On December 1, 2009, the Court denied
25 the motion for partial summary judgment. (Docket Entry 395.) On February 17,
26 2009, Defendants filed a motion for partial summary judgment as to the breach of
27 fiduciary duty claim in the case. (Docket Entry 131.) Plaintiff filed an opposition
28 on March 9, 2009. (Docket Entry 141.) On March 31, 2009, the Court granted that

1 motion for partial summary judgment. (Docket Entry 165.)

2 On December 20, 2009, Plaintiff filed a motion for class certification seeking
3 certification of a class of California residents who purchased Asurion's handset
4 insurance through T-Mobile. (Docket Entry 416.) On April 19, 2010 the Court
5 granted the motion for class certification. (Docket Entry 644.)

6 The matter was set for trial, and then continued several times. The case was
7 set to start trial on March 2, 2010. (Docket Entry 122.) The trial was continued to
8 September 2010 (Docket Entry 672, Minutes of June 7, 2010, Status Conference),
9 and then continued to November 15, 2010. (Docket Entry 676.) The case next was
10 scheduled to go to trial on January 25, 2011 (Docket Entry 708), and then continued
11 to February 22, 2011. (Docket Entries 747 and 770.) On January 31, 2011, the
12 Court entered an order taking the February 22 trial date off calendar to be reset in
13 the near future. (Docket Entry 785.)

14 Then, on May 9, 2011, Defendants filed a motion to compel arbitration
15 arguing that under the recent United States Supreme Court decision of *AT&T*
16 *Mobility LLC v. Concepcion*, 563 U.S. 333 (2011), the absent class members were
17 required to arbitrate individually. (Docket Entry 801.) On May 16, 2011, Plaintiff
18 opposed the motion. (Docket Entry 805.) On June 10, 2011, this Honorable Court
19 granted the motion. (Docket Entry 811.) The Court stayed the case pending
20 completion of individual non-binding arbitrations by the absent class members.

21 On September 10, 2012, Plaintiff filed a motion with this Honorable Court
22 for reconsideration of the order based in part on a new case. (Docket Entry 820.)
23 On October 25, 2012, the Court denied the motion. (Docket Entry 829.) On March
24 11, 2013, Plaintiff filed another motion with this Honorable Court for permission to
25 file a petition for interlocutory appeal of the arbitration order with the Ninth Circuit,
26 based in part on another new case. (Docket Entry 830.) On April 15, 2013, this
27 Honorable Court granted the motion. (Docket Entry 837.)

28 Plaintiff then filed a petition with the Ninth Circuit on May 2, 2013. (Docket

1 Entry 1 in Ninth Circuit Case No. 13-80105.) It was granted on July 11, 2013.
2 (Docket Entry 842.) On July 10, 2015, the matter was argued to the Ninth Circuit
3 and submitted. (Kick Decl. ¶¶ 3, 16.) While the matter was under submission, the
4 parties agreed to the instant settlement. (Kick Decl. ¶¶ 4, 16.)

5 As the above procedural history demonstrates, this was a hard fought
6 strongly contested case on both sides.

7 **B. INVESTIGATION AND DISCOVERY.**

8 The discovery and investigation in this action was extensive. Plaintiff took
9 the depositions of Asurion employees Beth McCullough on October 23, 2009;
10 Bettie Colombo on October 30, 2009; Bonita Speck on December 2, 2009; Jennifer
11 Davie on October 21, 2009; Penny Stafford on October 30, 2009; Richard Reybok
12 on October 21, 2009; Richard Schneider on November 3 and December 2, 2009;
13 and, Willard Reagan on October 30 and November 30, 2009. (Kick Decl. ¶ 17.)
14 Plaintiff also deposed T-Mobile employee Michael Katz on November 19, 2009.
15 (Kick Decl. ¶ 17.) Plaintiff also deposed defense expert Bruce Foudree on
16 September 20, 2010, and defense expert Gordon Klein on September 28, 2010.
17 (Kick Decl. ¶ 17.)

18 Plaintiff also propounded extensive written discovery. Specifically, Plaintiff
19 propounded a First Set of Special Interrogatories to Asurion on December 22, 2008;
20 a Second set of Special Interrogatories to Asurion on July 30, 2009; a Third Set of
21 Special Interrogatories to Asurion on November 4, 2011; a First Set of Special
22 Interrogatories to T-Mobile on March 10, 2009; a Second Set of Special
23 Interrogatories to T-Mobile on June 17, 2009; a Third Set of Special Interrogatories
24 to T-Mobile on November 4, 2009; a First Set of Requests for Production to
25 Asurion on December 22, 2008; a Second Set of Requests for Production to
26 Asurion on June 17, 2009; a Third Set of Requests for Production to Asurion on
27 July 1, 2009; a Fourth Set of Requests for Production to Asurion on September 29,
28 2009; a Fifth Set of Requests for Production to Asurion on October 22, 2009; a

1 Sixth Set of Requests for Production to Asurion on October 29, 2009; a Seventh Set
2 of Requests for Production on Asurion on November 4, 2009; a First Set of
3 Requests for Production to T-Mobile on March 10, 2009; a Second Set of Requests
4 for Production to T-Mobile on June 17, 2009; a Third Set of Requests for
5 Production to T-Mobile on July 1, 2009; a Fourth Set of Requests for Production to
6 T-Mobile on September 29, 2009; a Fifth Set of Requests for Production to T-
7 Mobile on October 22, 2009; a Sixth Set of Requests for Production on T-Mobile
8 on October 29, 2009; and, a Seventh Set of Requests for Production to T-Mobile on
9 November 4, 2009. (Kick Decl. ¶¶ 18.)

10 Defendant Asurion produced 103,725 pages of documents which class
11 counsel reviewed. (Kick Decl. ¶ 19.) The parties also exchanged expert reports on
12 issues related to liability and damages. (Kick Decl. ¶ 20.)

13 Class counsel also conducted exhaustive factual and legal research on the
14 issues in the case outside of the discovery propounded on Defendants. For
15 example, Class Counsel submitted a Public Records Act request to the California
16 Department of Insurance on December 23, 2010. (Kick Decl. ¶ 21.) Class counsel
17 also interviewed numerous class members about their experiences with the
18 insurance. (Kick Decl. ¶ 21.) Class counsel also interviewed former Asurion
19 employees about defendant Asurion's practices. (Kick Decl. ¶ 21.)

20 Defendants also conducted discovery, including taking the deposition of the
21 named plaintiff on May 11, 2009; taking the deposition of plaintiff's expert Mike
22 Nguyen on July 29, 2010; and, taking the deposition of plaintiff's expert Robert
23 Hall on August 20, 2010. (Kick Decl. ¶ 22.)

24 As the above demonstrates, discovery in this matter was very robust, and
25 allows for fully informed decisions.

26 **C. SETTLEMENT NEGOTIATIONS.**

27 At all times, the settlement negotiations were at arms' length and adversarial.
28 (Kick Decl. ¶¶ 24 – 25.) Throughout the course of this case, there have been

multiple attempts at resolving the matter through mediation. (*Id.*) Specifically, on December 23, 2009, the parties conducted a mediation with Richard Chernick, Esquire, of JAMS in Los Angeles. The mediation did not resolve the matter. (Kick Decl. ¶ 24.) On February 2, 2010, the parties participated in a mediation in San Francisco with former California Supreme Court Justice, the Honorable Edward Panelli (Retired), and Catherine Yanni, Esquire, of JAMs. (*Id.*) The mediation did not resolve the matter. On June 2, 2010, the parties participated in another mediation with Justice Panelli and Ms. Yanni, this time at JAMS in Los Angeles. (Kick Decl. ¶ 24.) That mediation also did not resolve this matter. (*Id.*)

The parties resumed attempts to settle the case in or about June 2014 with the assistance of the Honorable Peter Lichtman (Ret.), the former head of settlement of complex litigation and class actions in Los Angeles County. (Kick Decl. ¶ 25.) Over the course of approximately one year, through the assistance of Judge Lichtman, the parties engaged in numerous settlement communications. (*Id.*) In August of 2015, Judge Lichtman made a mediator's proposal which was accepted by the parties on August 15, 2015. (*Id.*)

III. THE PROPOSED SETTLEMENT AND NOTICE PROGRAM

A. THE CLASS IN THIS CASE HAS PREVIOUSLY BEEN CERTIFIED.

On April 19, 2010, this Honorable Court certified the following class:

“All persons who while residing in the State of California purchased cellular telephone insurance from Asurion through T-Mobile USA from August 1, 2003 through April 2, 2008.”

This Honorable Court excluded from the class “all individuals who released their claims against Defendants pursuant to the settlement agreement in *Carlos Perez et al v. Asurion Corporation et al.*, Case No. 06-20734 (S.D. Fla.)

The settlement is on behalf of all members of the already certified class.

///

///

B. TERMS OF THE SETTLEMENT.

1. Monetary Payment.

Pursuant to the terms of the Settlement, Defendants will pay \$4.2 million into a settlement fund, which will be set up by a third-party administrator and used to pay claims submitted by class members, to pay claims and notice administration costs, and to pay for attorney fees and litigation costs as approved by this Court. (Settlement Agreement ¶ 9; Kick Decl. ¶¶ 26 - 27.)

2. Payments to Claimants.

All class members will be mailed notice by first class postage U.S. mail. (Carameros Declaration ¶ 4; Settlement Agreement ¶ 4(a); Kick Decl. ¶ 31.) Under the Settlement, the Net Settlement Fund (the fund minus any attorney fees and costs approved by this Court, and claims and notice expenses) will be available to pay claims. The settlement is structured so that depending on the participation rate, any class member who timely submits a claim form will receive a pro rata share of the net settlement fund, capped at \$124 per class member. (Settlement Agreement ¶ 9(e); Kick Decl. ¶ 26.) \$124 is 150% of the estimated average maximum compensatory recovery per class member under the disputed total refund damages model that Plaintiff was advocating. (Kick Decl. ¶ 26.)

3. The Claims Process.

The claims administrator is proposed to be Kurtzman Carson Consultants (“KCC”). (Settlement Agreement ¶ 1(e); Kick Decl. ¶ 31.) KCC is highly experienced in notice and claims administration. (Carameros Decl. ¶ 2.) In fact, KCC is the claims administrator which already previously sent notice to these same class members of the certification of this matter. (Kick Decl. ¶ 31.) Although KCC previously received the contact information for the class members when it accomplished the notice approved by this Honorable Court after certification, Defendants nonetheless will transmit to KCC in a useable electronic format updated mailing addresses that are available for each class member. (Settlement Agreement

¶ 4(a); Kick Decl. ¶ 31.) After receiving this information, the claims administrator will then run it through the National Change of Address database. (Carameros Decl. ¶ 4.) The short form of the notice of this settlement will then be mailed to class members using first class mail. (Carameros Decl. ¶ 4; Settlement Agreement ¶ 4(a) Kick Decl. ¶ 31.) The class members will have their choice of making a claim through the U.S. mail or making a claim online through a website which is being built for this settlement. (Carameros Declaration ¶ 6; Settlement Agreement ¶ 4; Kick Decl. ¶ 31.) According to the proposed schedule for this settlement process, assuming this Motion for Preliminary Approval is granted on December 7, notice would be sent to the class members not later than December 21, and class members would have until February 26 to submit a claim, which is more than sixty days to make a claim. (Kick Decl. ¶ 32.)

4. Mailing of Settlement Payments.

Ten days after the Effective Date of the Settlement, class members who made timely and valid claims will be mailed a check with their share of the settlement proceeds. (Settlement Agreement ¶9(f); Kick Decl. ¶ 31.)

5. *Cy Pres* Distribution.

Under no circumstances will any of the money from this settlement revert to Defendants. (Settlement Agreement Paragraph 9(g); Kick Decl. ¶ 31.) Rather, if there is any residue which remains in the Net Settlement Fund after all class members who made valid claims have been paid the amount to which they are entitled, the Settlement provides for a *cy pres* distribution of such residue. (Settlement Agreement ¶ 12; Kick Decl. ¶ 27.) Plaintiff will propose for the Court's consideration an appropriate *cy pres* recipient(s), and Defendants will either agree with the proposal, be silent, or make a competing proposal to the Court on this issue. (Settlement Agreement ¶ 21; Kick Decl. ¶ 27.)

6. Changes in Corporate Practice.

In substantial part as a result of the filing of this action, Defendants agreed on

1 or about April 2, 2008 (i.e., the date on which the Class Period in this action ends),
2 to enhance certain disclosures they make to potential customers. In particular,
3 Defendants agreed henceforth to “specifically inform” potential customers, at the
4 time they make a point-of-sale decision to enroll in an Asurion
5 wireless protection plan, about (among other things) the potential use of refurbished
6 or different equipment to satisfy claims, two of the prime issues in this case.
7 (Settlement Agreement ¶ 2; Kick Decl. ¶ 28.)

8 **7. Class Notice.**

9 As stated in section 3, *supra.*, the Settlement Agreement provides that the
10 class will receive direct notice by first class mail with a longer version of the notice
11 posted on the claims administrator’s website. (Carameros Decl. ¶¶ 4-6; Settlement
12 Agreement ¶ 4; Kick Decl. ¶ 31.) Defendants will provide available updated class
13 member mailing addresses to the claims administrator, and the claims administrator
14 will run the addresses through the National Change of Address registry and further
15 update any addresses that are no longer current. (Carameros Decl. ¶ 4; Settlement
16 Agreement ¶ 4(a) Kick Decl. ¶ 31.)

17 **8. Opt Out Procedure.**

18 Any class member who wishes to opt out can do so by mailing an exclusion
19 letter, or opting out via the settlement administrator’s website, by the Bar Date.
20 (Settlement Agreement ¶ 13; Kick Decl. ¶¶ 31 - 32.)

21 **9. Opportunity to Object.**

22 Pursuant to the case of *In re Mercury Interactive Corp. Securities Litigation*,
23 618 F.3d 988, 993 (9th Cir. 2010), under the proposed schedule for approval of this
24 settlement, class counsel will file the Motion for Final Approval, including for
25 attorneys’ fees and reimbursement of costs, both with this Honorable Court and
26 also on the website created by the claims administrator for this settlement by
27 January 11, 2016, which is fifteen days before the time to object has expired. (Kick
28 Decl. ¶ 32.) Any class member who wishes to object to the settlement terms can

1 then do so by mailing an objection to the Court and the settlement administrator by
2 January 26, 2016. (Settlement Agreement ¶¶ 1(c), 14; Kick Decl. ¶ 32.) This
3 proposed schedule therefore complies with *In re Mercury Interactive Corp.*
4 *Securities Litigation*, 618 F.3d 988, 993 (9th Cir. 2010.)

5 **10. Attorneys' Fees and Costs.**

6 Attorneys' fees and costs are to be paid out of the settlement fund. In the
7 course of this more than nine-year old strongly contested case, which already has
8 been argued to the 9th Circuit, class counsel has a reasonable lodestar in excess of
9 \$3.4 million, plus litigation costs. (Kick Decl. ¶ 40.) Despite this lodestar, Class
10 counsel will apply to this Court for attorneys' fees of \$1.9 million plus litigation
11 costs, a fee amount which is a substantial reduction of class counsel's lodestar.
12 Defendant has agreed not to oppose this fee request if it does not exceed \$1.9
13 million plus costs. Class counsel will address in the Motion for Final Approval the
14 reasonableness of the attorneys' fees under California law, and will also present
15 expert testimony on the issue. (Kick Decl. ¶ 30.)

16 **11. Release.**

17 In consideration for the settlement, as detailed in the Settlement Agreement,
18 class members are releasing all claims they made, could have made, or in any way
19 arise out of any allegations that were or could have been made by any Class
20 Member concerning alleged wrongdoing during the class period (consistent with
21 the class definition) in the Action.. (Settlement Agreement ¶ 15; Kick Decl. ¶ 29.)

22 **IV. ARGUMENT**

23 **A. THE SETTLEMENT SHOULD BE PRELIMINARILY APPROVED.**

24 **1. Class Action Settlement Procedure.**

25 A class action may not be dismissed, compromised or settled without the
26 approval of the Court. The Fed. R. Civ. Pro. Rule 23(e) settlement approval
27 procedure describes a three step process where, as here, a class already has been
28 certified:

- 1) Preliminary approval of the proposed settlement;
- 2) Dissemination of notice of the settlement to all affected class members; and
- 3) A formal fairness hearing, also called the final approval hearing, at which class members may be heard regarding the settlement, and at which counsel may introduce evidence and may present argument concerning the fairness, adequacy, and reasonableness of the settlement.

This procedure safeguards class members' due process rights, and enables this Honorable Court to protect the class members' interests. *See 4 Newberg on Class Actions* §§ 11:22 et seq (2002) (describing class action settlement procedure).

This motion asks that this Honorable Court take the first step in this three step process by preliminarily approving the Settlement Agreement of the parties.

2. Standards for Preliminary Approval.

Public policy "strong[ly] . . . favors settlements, particularly where complex class action litigation is concerned." *Pilkington v. Cardinal Health, Inc.*, 516 F.3d 1095, 1101 (9th Cir.2008); *Churchill Village, L.L.C. v. Gen. Elec.*, 361 F.3d 566, 576 (9th Cir. 2004); *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992). In exercising discretion on whether to approve a proposed class action settlement, a United States District Court should give "proper deference to the private consensual decision of the parties...[T]he court's intrusion upon what is otherwise a private consensual agreement negotiated between the parties to a lawsuit must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned." *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1027; *see also* Fed. R. Civ. P. 23(e)(2).

At the preliminary approval stage, the district court need only find that the proposed settlement is within the "range of reasonableness," such that

1 dissemination of notice to the class and the scheduling of a fairness hearing are
2 worthwhile and appropriate. 4 Newberg § 11.25; *see also In re Tableware Antitrust*
3 *Litig.*, 484 F.Supp.2d 1078, 1079-80 (N.D. Cal. 2007).

4 The proposed settlement herein meets the standards for preliminary approval
5 because (1) it is the product of serious informed non-collusive negotiations arrived
6 at after years of litigation, extensive discovery, and preparation for trial; (2) it has
7 no obvious deficiencies because it provides relief that is appropriately tailored to
8 the alleged harm and that is fair, reasonable and adequate given the risks of
9 litigation; (3) it treats all class members equally; (4) it was negotiated by and
10 recommended by experienced counsel; and (5) it was the result of a mediator's
11 proposal from an experienced mediator. (*In re Tableware Antitrust Litig.*, 484
12 F.Supp.2d at 1079 (preliminary approval should be granted if "the proposed
13 settlement appears to be the product of serious informed non-collusive negotiations,
14 has no obvious deficiencies, does not improperly grant preferential treatment to
15 class representatives or segments of the class and falls within the range of possible
16 approval"; *Sandoval v. Tharoldson Emple Mngmt.*, 2010 U.S. Dist. LEXIS 69799
17 (2010): "The assistance of an experience mediator in the settlement process
18 confirms that the settlement is non-collusive."; *Booth v. Strategic Realty Trust,*
19 *Inc.*, 2015 U.S. Dist. LEXIS 84143 *25 (N.D. Cal. 2015): "Experienced counsel for
20 both parties endorse the settlement, weighing in favor of preliminary approval.")

21 **3. The Settlement is the Product of Arms-Length Negotiations after**
22 **Years of Litigation.**

23 "Before approving a class action settlement, the district court must reach a
24 reasoned judgment that the proposed agreement is not the product of fraud or
25 overreaching by, or collusion among, the negotiating parties." *City of Seattle*, 955
26 F.2d at 1290 (citation omitted). Where, as here, a settlement is the product of arms-
27 length negotiations conducted by capable and experienced counsel, the court begins
28

1 its analysis with a presumption that the settlement is fair and reasonable. *See* 4
2 Newberg § 11.41; *In re Heritage Bond Litig.*, MDL Case No. 02-ML-1475 DT,
3 2005 U.S. Dist. LEXIS 13555, at *32 (C.D. Cal. June 10, 2005); *Ellis v. Naval Air*
4 *Rework Facility*, 87 F.R.D. 15, 18 (N.D. Cal. 1980). Further, the presumption of
5 fairness applies with particular force, where, as here, the settlement is entered into
6 after a class has been certified. *See Jones v. GM Net Com. Inc (In re Bluetooth*
7 *Headset Prods. Liab. Litig.)* 654 F.3d 935, 946-947 (9th Cir. 2011) (explaining
8 different standard when class was not certified prior to settlement.)

9 In this case, the settlement has been arrived after both sides have done the
10 maximum possible due diligence, and tested and challenged each other's factual
11 allegations and legal theories. As already stated, this lawsuit was filed more than
12 nine years ago, in October 2006. (Docket Entry 1.) The parties filed, and this
13 Court ruled on, motions to dismiss, motions for summary judgment, and a motion
14 for class certification. (Kick Decl. ¶¶ 20-24) The case was litigated to the eve of
15 trial, including review of over 100,000 documents which had been produced, and
16 thirteen depositions, including expert witness depositions. (Kick Decl. ¶¶ 12, 13,
17 19, 20.) The parties filed motions in limine and other pretrial motions. (Kick Decl.
18 ¶ 13.) The parties exchanged witness and exhibit lists, and proposed jury
19 instructions. (Kick Decl. ¶ 13.)

20 On the eve of trial, Defendants filed a motion to compel arbitration which
21 was granted. (Kick Decl. ¶ 14.) Plaintiff filed a petition for permission to appeal
22 which was granted by this Court and the Ninth Circuit. (Kick Decl. ¶¶ 15, 16.) The
23 appeal was fully briefed and argued to the Ninth Circuit. (*Id.*) The parties reached
24 a settlement while the matter was under submission, indeed while the Ninth Circuit
25 was considering *en banc* review. (Kick Decl ¶ 16.)

26 The settlement is the result of arms-length settlement negotiations that began
27 in or about June 2014 with the Honorable Peter Lichtman, the former chief
28 settlement judge in the complex courthouse in Los Angeles County. (Kick Decl. ¶

25.) Prior to that, three other experienced and diligent mediators, including a retired California Supreme Court Justice, were used by the parties. (Kick Decl. ¶ 24.) That process with Judge Lichtman, the fourth mediator used on this case, resulted in a mediator's proposal that the parties accepted on August 14, 2015. (Kick Decl. ¶ 25.) At the time the settlement was agreed to, the parties were fully informed about the evidence in the case, the legal issues, and the considerable risks of proceeding with the litigation. All negotiations at all times were at arms-length and adversarial. (Kick Decl. ¶¶ 24 - 25.)

4. The Settlement is Reasonable, Fair and Adequate Given The Strength of The Case and The Risks of Litigation.

As stated, the settlement provides for a monetary fund of \$4.2 million. Defendants will not receive a reversion of any unclaimed funds. Settlement claimants will all receive the same pro-rata share of the net settlement fund, which, depending upon the participation rate, can be as much as \$124. (Settlement Agreement ¶ 9(e); Kick Decl. ¶ 26.) This \$124 figure is approximately one and one-half times the average amount of all premiums paid by the class members during the Class Period. (Kick Decl. ¶ 26.)

Plaintiff's counsel believes that the most likely restitutionary number the class would have received in aggregate, had it prevailed at trial, is \$7.8 million. (Kick Decl. ¶ 33.)¹ This is arrived at as follows.

¹ In theory, the class could have received a total aggregate refund if it prevailed at trial of \$90.1 million. (Linde Decl. ¶ 14.) However, that number assumes that a jury would award a refund of *all* premiums paid for the insurance during the class period. In order for such a "total refund" award to be supportable, this Court would have to conclude that under the UCL's fraud prong the California Insurance Code allows disregarding the value of what was received. Class counsel thinks it is more likely that under the fraud prong the difference in value, \$7.7 million, would have been awarded. But even under the total premium refund theory the settlement still is well within the range of reasonableness for approval: "...there is no reason, at least in theory, why a satisfactory settlement could not amount to a hundredth or even a thousandth part of a single percent of the potential recovery." *Detroit v. Grinnell Corp.*, 495 F.2d 448, 455 (2d Cir. 1974). *see also Officers for Justice*, 688 F.2d 615, 628 (9th Cir. 1982).

Based on the report of defense expert witness Gordon Klein, who was deposed in this matter, the probability of receiving a refurbished phone under the program which is the subject of this class action was 57.7%. (Declaration of Daniel Linde [hereafter “Linde Decl.”] ¶ 13.) As economist Daniel Linde explains, therefore the diminution in value as a result of Defendants’ use of refurbished phones to fulfil claims can be calculated by determining the probability of receiving a refurbished phone (57.7%), then factoring in the value of a refurbished phone versus a new phone (85%). (Linde Decl. ¶ 14.) As Mr. Linde further explains, by then dividing the aggregate premiums by the possibility of receiving a refurbished phone, then deducting 85% of that number, one arrives at a figure of \$7.8 million in diminution in value as a result of Defendants’ use of refurbished phones:

“In this approach, aggregate Class damages would be equal to the total premium minus the amount of premium that can be attributed to a refurbished phone and can be calculated as follows:

		<u>Source</u>
Total premiums (a)	\$90,103,795	Klein Report, Ex 7
Probability of receiving refurbished phone (b)	57.7%	Klein Report, Ex 9
Value of refurbished phone relative to new phone (c)	85%	Klein Report, p. 25
Diminished benefit or damages	\$7,798,483	(a) * (b) * (1-(c)).”

(Linde Decl., ¶ 15.)

In other words, in class counsel’s opinion, and as illustrated by economist Linde above, the most likely class award in a fraud based case such as this one, would be the difference in value between an insurance program which provides new phones in all cases, and one which provides refurbished phones in 57.7% of cases as the Defendants did. (Linde Decl. ¶ 13.) Therefore, the settlement provides for a monetary payment in the amount of about 54% of what class counsel believes would have been the most likely aggregate award that the class would have recovered at trial. (Kick Decl. ¶ 33.)

1 Further, this analysis assumes that the class would have succeeded in
2 convincing the Ninth Circuit to reverse this Court's order compelling individual
3 arbitration. Under the current posture of the case, class members were not entitled
4 to receive anything, but instead would have had to either abandon their case or
5 pursue an arbitration process that Plaintiff's counsel believes would have cost each
6 class member approximately \$3,250 (as it cost the class representative), when the
7 average premium paid amount which would have been at issue in an individual
8 class member's arbitration only would have been about \$80. (Kick Decl. ¶ 34.) In
9 class counsel's opinion, this means likely no class member would have gone
10 through an individual non-binding arbitration since, as Judge Posner has stated:
11 "The realistic alternative to a class action is not 17 million individual suits, but zero
12 individual suits, as only a lunatic or a fanatic sues for \$30." (*Carnegie v.*
13 *Household Int'l, Inc.*, 376 F.3d 656, 661. (7th Cir. 2004.)² (Kick Decl. ¶ 34.)

14 This analysis also assumes that the class would have prevailed on the merits.
15 Although Plaintiff believes this eventually would have happened, the Defendants
16 did have arguments which needed to be seriously considered. First, Defendants
17 have stated that if Plaintiff prevailed at the 9th Circuit, they would file a motion to
18 decertify the class. (Kick Decl. ¶ 34.) While Plaintiff believes such a motion would
19 be meritless, it nonetheless raises a risk, and therefore some discount needs to be
20 applied for that. (*Id.*) Second, although Plaintiff believes this case has good jury
21 appeal, and Plaintiff's jury focus grouping of the case was favorable, it is not
22 impossible that that the trier of fact nonetheless would have agreed with
23 Defendants' view of the case, and therefore a discount needs to be applied for that
24 as well. (*Id.*) This is not a case where there was no disclosure at all of the
25 misrepresentations/ omissions at issue, but rather a case where there was disclosure
26 which Plaintiff contended was not sufficient. (*Id.*)

27 ² Moreover, there was no guarantee of any award in arbitration, as the one
28 arbitration that occurred resulted in a zero award (to the named Plaintiff). (Kick
Decl. ¶ 9.)

1 Finally, even if there were a favorable verdict for the class at trial, that
2 verdict would be subject to appeal. (*Id.*) Indeed, this case already has been to the
3 9th Circuit once, and was at the time of settlement currently being considered for *en*
4 *banc* review by the 9th Circuit, and the United States Supreme Court in recent years
5 has shown a strong interest in taking up questions involving class actions. (*e.g.*,
6 *AT&T Mobility L.L.C. v. Concepcion*, 563 U.S. 333 (2011); *Comcast Corp. v.*
7 *Behrend*, (2013) 133 S. Ct. 1246.)

8 The proposed settlement provides significant monetary relief for the class
9 while enabling them to avoid the significant risks and uncertainty of the litigation.
10 The litigation also resulted in changes to the conduct that spurred the litigation, in
11 the form of improved disclosures to consumers regarding the insurance program.
12 (*Cf Singer v. Becton Dickinson & Company*, Case No. 08-CV-821-IEG (BLM)
13 2010 U.S. Dist. LEXIS 54316 *14 (S.D. Cal. 2010) (noting policy changes by
14 defendant as benefit supporting settlement.)

15 **5. The Settlement Treats Class Members Equally.**

16 Under the settlement, all class members are treated equally. The amount
17 claimants will receive depends on the participation rates, but all class members who
18 submit valid timely claims will receive a pro rata share of the net settlement amount
19 capped at about one and one-half times the average class member's premiums paid.
20 (Settlement Agreement ¶ 9(e)(2); Kick Decl. ¶ 26.)

21 **6. The Recommendation of Experienced Counsel Supports Approval.**

22 The judgment of competent counsel regarding the Settlement should be
23 given significant weight. *See Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221
24 F.R.D. 523, 528 (C.D. Cal. 2004) (" 'Great weight' is accorded to the
25 recommendation of counsel, who are most closely acquainted with the facts of the
26 underlying litigation."); *Ellis v. Naval Air Rework Facility*, 87 F.R.D. 15, 18 (N.D.
27 Cal. 1980); *Boyd v. Bechtel Corp.*, 485 F. Supp. 610, 622 (N.D. Cal. 1979) ("The
28 recommendations of plaintiffs' counsel should be given a presumption of

1 reasonablyness.”). Plaintiff’s counsel are experienced in litigating and settling
2 consumer class actions and other complex matters. (Kick Decl. ¶ 2.) They have
3 intensively investigated and litigated the factual and legal issues raised in this
4 action, and are in favor of the settlement. (*Id.*, at ¶¶ 17- 21, 35.)

5 **7. The Proposed Forms of Notice and Notice Programs are Appropriate**
6 **and Should Be Approved.**

7 The Settlement Agreement is attached as Exhibit 1 to the Declaration of
8 Taras Kick. The proposed short form notice is attached as Exhibit 3 to the
9 Settlement Agreement, and the Proposed Long Form Notice is attached as Exhibit 2
10 to the Settlement Agreement, as well as Exhibit A to the declaration of claims
11 administrator Jonathan Carameros of KCC. The proposed forms of notice and
12 notice program here fully comply with due process and Fed. R. Civ. P. 23. Rule
13 23(c)(2)(B) requires:

14 “[T]he best notice practicable under the circumstances, including
15 individual notice to all members who can be identified through
16 reasonable effort. The notice must concisely and clearly state in
17 plain, easily understood language: the nature of the action; the
18 definition of the class certified; the class claims, issues, or defenses;
19 that a class member may enter an appearance through an attorney if
20 the member so desires; that the court will exclude from the class
any member who requests exclusion; the time and manner for
requesting exclusion; and the binding effect of a class judgment on
class members under Rule 23(c)(3).”

21 The content of the notice to class members “is satisfactory if it ‘generally
22 describes the terms of the settlement in sufficient detail to alert those with adverse
23 viewpoints to investigate and to come forward and be heard.’” *Rodriguez v. West*
24 *Publishing Corp.*, 563 F.3d 948 (9th Cir. 2009). The notice here does this.
25 (Carameros Decl. Ex. A.)

26 In the context of a class settlement, the notice must also include a general
27 description of the proposed settlement. *See Churchill Village*, (9th Cir. 1999) 361
28 F.3d at 575; *Torrissi v. Tucson Elec. Power Co.*, 8 F.3d 1370, 1375 (9th Cir. 1993).

The proposed forms of notice here include all the required information. (Carameros Decl. Ex. A.)

Finally, the notice program here provides for direct individual notice to all class members by first class postage U.S. Mail. (Carameros Decl. ¶ 4 .)

8. The Class Representative Service Award is Reasonable.

The proposed class representative service award is only \$5,000 and is well within the range of reasonableness. *Pierce v. Rosetta Stone Ltd.*, 2013 U.S. Dist. LEXIS 63856 *21 n5 (N.D. Cal. 2013) (a service award of \$5,000 is “presumptively reasonable in this district.”) *See also, Buccellato v. AT&T Operations, Inc.*, No. C-10-00463, 2011 WL 4526673, at *4 (N.D. Cal. June 30, 2011) (approving \$20,000 award to lead plaintiff and \$5,000 to each of four additional class representatives). The class representative in this case was very helpful to the case’s success. (Kick Decl. ¶ 30.).

B. SCHEDULE OF SETTLEMENT DATES.

The next steps in the settlement approval process are to notify the Class of the proposed Settlement, allow an opportunity for opt-outs and objections, and to hold a fairness hearing. The parties propose the following dates, assuming this Motion for Preliminary Approval is granted on December 7, 2015, and such dates are acceptable to the docket of this Honorable Court:

Claims Administrator Sends Notice and Website Goes Live	December 21, 2015
Motion For Final Approval and Attorneys’ Fees Filed With Court and Posted on Website	January 11, 2016
Last day to Object or Opt Out	January 26, 2016
Last day to file responses to objections and Class Counsel’s and Defendants’ Replies in Support of Motion for Final Approval and Attorneys’ Fees	February 8, 2016
Final Approval Hearing	February 15, 2016

1	Claims deadline	February 26, 2016
2	Filing By Claims Administrator of Declaration re Payments Made	August 25, 2016
3	Filing By Claims Administrator of Final Report	September 6, 2016

5 **V. Conclusion.**

6 Based on the foregoing, Plaintiff respectfully requests that the Court: (1)
7 preliminarily approve the Settlement; (2) approve the proposed plan of notice to the
8 Class; (3) appoint Kurtzman Carson Consulting as the Notice Administrator; (4) set
9 a schedule of dates as set forth above for further action on this Settlement
10 Agreement, including a hearing pursuant to Rule 23(e) of the Federal Rules of Civil
11 Procedure to determine whether the proposed Settlement is fair, reasonable, and
12 adequate and should be finally approved.

13 Dated: November 2, 2015

Respectfully submitted,
The Kick Law Firm, APC

16 By: s/Taras Kick
17 Taras Kick
18 James Strenio
19 Thomas Segal
20 Attorneys For Plaintiff Wineesa Cole
21 And the Certified Class

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

Wineesa Cole, individually and on
behalf of all others similarly situated,

Plaintiff,

vs.

Asurion Corporation, a Delaware
Corporation, Asurion Insurance
Services, Inc., a Tennessee
Corporation, T-Mobile USA, Inc., a
Delaware Corporation, Liberty Mutual
Insurance Company, a Massachusetts
Corporation, and DOES 1 through 500,

Defendants.

Case No. CV-06-6649-R (JCx)

Before The Honorable L. Manuel Real

[Proposed] Order Granting Plaintiff's
Unopposed Motion for Preliminary
Approval of Class Action Settlement

Date: December 7, 2015

Time: 10:00am

Courtroom: 8

ORDER

The parties came for hearing on Plaintiff's Unopposed Motion for Preliminary Approval of Class Action Settlement on December 7, 2015, at 10:00am, the Honorable Manuel L. Real presiding. The Court having considered the papers submitted HEREBY ORDERS THE FOLLOWING:

1. To the extent terms in this Order are defined in the Settlement Agreement and Release ("Settlement Agreement") submitted to the Court as Exhibit 2 to the Declaration of Taras Kick, Esq., such terms shall have the same meaning in this Order as in the Settlement Agreement.

2. The Court grants preliminary approval of the Settlement based upon the terms set forth in the Settlement Agreement and the Motion for Preliminary Approval, and based upon the Declarations of Taras Kick, Jonathan Carameros, and Daniel Linde in Support of Preliminary Approval, and all of the briefing and information submitted in this case to date.

3. The Court preliminarily finds that the Settlement Agreement has been reached as a result of intensive, serious, and non-collusive arms-length negotiations. The Court notes that a class was previously certified in this matter, that extensive discovery has occurred, and that the case was litigated up until the eve of trial, and up to the point of oral argument at the Ninth Circuit. The Court preliminarily finds that counsel for the parties are able to reasonably evaluate their respective positions. The Court also preliminarily finds that settlement at this time will avoid substantial additional costs to all parties, as well as the uncertainty and risks that would be presented to the parties by further litigation of the claims resolved by the Settlement Agreement. The Court has reviewed the relief granted by the Settlement Agreement and recognizes the significant value to the Class of that relief.

4. The Settlement is supported by the recommendations of counsel and was negotiated at arms-length, and is thus presumptively valid, subject to any objections that may be raised at the fairness hearing, and to final approval by this

1 Court.

2 5. The Court approves as to form and content the Long Form Notice of
3 Class Action Settlement, and the Short Form Notice of Class Action Settlement
4 attached to the Declaration of Jonathan Carameros as Exhibit A.

5 6. The Court directs the mailing of the Short Form Notice to be
6 accomplished by December 21, 2015. The settlement administrator is to post the
7 Long Form Notice and Claim Form on the settlement website by December 21,
8 2015. The Court finds that this procedure meets the requirement of due process and
9 Federal Rule of Civil Procedure 23(e), and is the best notice practicable under the
10 circumstances.

11 7. The Court appoints Kurtzman Carson Consultants (KCC) as the
12 settlement administrator based on the Declaration of Jonathan Carameros attesting
13 to KCC's experience and qualifications.

14 8. Class Counsel will file their motion for fees and costs no later than
15 January 11, 2016, which is 15 days before the deadline for class members to file
16 objections. A copy of the motion will be posted on the settlement website by this
17 same January 11, 2016, date.

18 9. The deadline for class members to object to or opt out of the settlement
19 is January 26, 2016. To be valid and considered by the Court, the objection must
20 be sent by first class mail, postage pre-paid, to the Court and the settlement
21 administrator. The objection must be postmarked on or before January 26, 2015,
22 and must include i) a heading referring to the *Cole v. Asurion* action; ii) the
23 objector's name, address, telephone number, and the contact information for any
24 attorney retained by the objector in connection with the objection or otherwise in
25 connection with the Litigation; iii) a statement of the factual and legal basis for
26 each objection and any exhibits the objector wishes the Court to consider in
27 connection with its objection; and, iv) a statement as to whether the objector intends
28 to appear at the Final Approval Hearing, either in person or through counsel, and if

1 through counsel, identifying the counsel by name, address and telephone number.

2 10. The parties are to file any responses to objections by February 8, 2016.

3 11. A final fairness hearing on whether the proposed settlement, attorneys'
4 fees and costs, the Class Representative's service award and the *cy pres* recipient
5 should be approved as fair, reasonable, and adequate to the members of the
6 Settlement Class will be held on February 15, 2016 at 10:00am.

7
8 Dated:

Honorable Manuel L. Real

1 THE KICK LAW FIRM, APC
2 Taras Kick (State Bar No. 143379) (Taras@kicklawfirm.com)
3 G. James Strenio (State Bar No. 177624) (James@kicklawfirm.com)
4 Thomas A. Segal (State Bar No. 222791) (Thomas@kicklawfirm.com)
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6 Santa Monica, California 90401
7 Telephone: (310) 395-2988
8 Facsimile: (310) 395-2088

9 Attorneys for Plaintiff Wineesa Cole
10 and the Certified Class

11
12 **UNITED STATES DISTRICT COURT**
13 **CENTRAL DISTRICT OF CALIFORNIA**
14

15 Wineesa Cole, individually and on
16 behalf of all others similarly situated,

17 Plaintiff,

18 vs.

19 Asurion Corporation, a Delaware
20 Corporation, Asurion Insurance
21 Services, Inc., a Tennessee
22 Corporation, T-Mobile USA, Inc., a
23 Delaware Corporation, Liberty Mutual
24 Insurance Company, a Massachusetts
25 Corporation, and DOES 1 through 500,

26 Defendants.
27
28

Case No. CV-06-6649-R (JCx)

Before The Honorable Manuel L. Real

Declaration of Taras Kick In Support of
Plaintiff's Unopposed Motion for
Preliminary Approval of Class Action
Settlement

Date: December 7, 2015

Time: 10:00am

Courtroom: 8

DECLARATION OF TARAS KICK

I, Taras Kick, declare:

1. I am an attorney with The Kick Law Firm, APC, class counsel for Plaintiff and the certified class in this matter. I have personal knowledge of the facts herein and, if called as a witness, can and would testify competently thereto.

2. I have been a member of the California State Bar since 1989, the year I graduated from the University of Pennsylvania Law School. Prior to that, in 1986, I graduated from Swarthmore College, from which I earned a Bachelor of Arts degree in Economics and Psychology. I have served as class counsel in numerous national and California class actions, including being appointed lead counsel and a member of plaintiffs' executive committees. I am a member of the national Board of Directors of Public Justice, and a member of numerous committees pertaining to consumer class actions, including the Public Justice Class Action Preservation Committee; the American Association for Justice Class Action Litigation Sub-Group; the Consumer Attorneys of California Class Action Group; the American Bar Association Committee on Class Actions & Derivative Suits; and, the State Bar of California Antitrust and Unfair Competition Litigation section. The Kick Law Firm, APC primarily represents plaintiffs in consumer class actions. The firm's class action experience includes, but is not limited, to the following cases: *Casey v. Orange County's Credit Union*, Orange County Superior Court Case No. 30-2013-00658493 (co-lead class counsel for statewide class of credit union employees); *Kirtley v. Wadekar*, United States District Court for the District of New Jersey, Case No. 05-5383 (lead class counsel for nationwide class of purchasers of generic drugs); *Ford Explorer Cases*, Sacramento County Superior Court, JCCP Nos. 4266 & 4270 (co-class counsel for nationwide class of car purchasers); *Pereyra v. Mike Campbell & Associates*, Los Angeles County Superior Court Case No. BC365631 (lead class counsel for state-wide class of employees); *Alston v. Pacific Bell*, Los Angeles County Superior Court Case No. BC297863

(lead class counsel for multi-state class); *Oshaben v. Monster Worldwide, Inc., et al.*, San Francisco County Superior Court Case No. CGC-06-454538 (lead class counsel for nationwide class).

Current Procedural Posture Including Remand from the Ninth Circuit

3. This consumer class action case was certified by the district court on April 19, 2010. It has been vigorously contested by both sides since 2006 when it was first filed, more than nine years ago. It recently was argued to the Ninth Circuit (on July 10, 2015), in large part on the question of the effect of *AT&T Mobility L.L.C. v. Concepcion*, 563 U.S. 333 (2011) related to a non-binding arbitration clause such as the one in this case.

4. On October 26, 2015, the Ninth Circuit announced that a member of the panel which heard the appeal had called for the case to be heard *en banc* in the first instance. Later that same day, the parties filed with the Ninth Circuit a “Stipulation to Dismiss Appeal Without Prejudice to Reinstatement,” informing the Ninth Circuit of the parties’ imminent settlement. On October 27, 2015, the Ninth Circuit issued an order stating that it construed the filing as a motion for limited remand, and granted the motion to remand to the district court for the limited purpose of considering whether to approve the settlement without prejudice to reinstating the appeal if the settlement is not approved. A true and correct copy of this Order of the Ninth Circuit is attached as Exhibit 1 to this declaration.

5. In that same Order, the Ninth Circuit stated that “*if the parties inform this Court that the settlement will be approved, the appeal will be dismissed.*” (Exhibit 1.) This Unopposed Motion for Preliminary Approval seeks to start the approval process by this Honorable Court to so as to be able to eventually inform the Ninth Circuit that the proposed Settlement Agreement in this matter has been approved by this Court, and so that the appeal to the Ninth Circuit may be dismissed.

///

The Settlement Agreement

6. A true and correct copy of the Settlement Agreement in this matter is attached hereto Exhibit 2. Certain of its contents relevant to Preliminary Approval are discussed further below.

The Extensive Procedural History of this Case

7. As the following evidences, this more than nine year-old case has had a very thorough testing of the factual contentions and legal theories by both sides, demonstrating that not only were opposing counsel at arms-length and adverse at all times, but also are very well informed of the issues in this case. This is further evidenced in later sections of this declaration, including that pertaining to the very robust discovery in this action, and the use by the parties of *four separate mediators* in trying to reach a settlement, including a retired California Supreme Court Justice.

8. The complaint in this action was filed on October 10, 2006. (Docket Entry 1.) Before filing the complaint, Plaintiff's counsel conducted a thorough investigation. The Complaint alleged that Defendants engaged in deceptive advertising by selling handset insurance and representing that the replacement phones will be of "like, kind, quality and value" to the lost phone without disclosing that the replacement phones were sometimes refurbished rather than new, and also might differ in other ways. (Docket Entry 1, Complaint ¶ 6, ¶¶ 17-20.) On November 28, 2006, Plaintiff filed a First Amended Complaint. (Docket Entry 7.) On January 31, 2007, Defendants filed a motion to dismiss the First Amended Complaint. (Docket Entry 22.) Among other things, Defendants argued that the class allegations should be dismissed because class members were subject to a contractual provision requiring arbitration of their claims.

9. On February 20, 2007, Plaintiff filed an opposition to the motion. (Docket Entry 37.) On July 27, 2007, the district court entered an order granting in part and denying in part Defendants' motion to dismiss. (Docket Entry 51.) The

1 district court ordered the parties to submit further briefing on the effect of the
2 arbitration provision in the handset insurance policy on the class allegations in the
3 First Amended Complaint. On or about September 27, 2007, the district court
4 entered an order striking the class allegations from the First Amended Complaint
5 without prejudice. (Docket Entry 68.) On October 3, 2007, Plaintiff filed a motion
6 requesting clarification as to whether the district court meant that only the named
7 class representative need go through the non-binding arbitration and then can
8 represent absent class members in the class action, or whether each absent class
9 member was required to go through the non-binding arbitration to be able to be a
10 member of the class in the class action suit. (Docket Entry 70.) On October 12,
11 2007, Plaintiff filed a Second Amended Complaint. (Docket Entry 74.) On
12 November 13, 2007, the district court entered an order clarifying that only the
13 named Plaintiff needed to arbitrate her claims, and then can go forward with the
14 class action on behalf of absent class members even though the individual members
15 of the class had not gone through a non-binding arbitration. (Docket Entry 83.)
16 The named Plaintiff submitted her claims to non-binding arbitration. The
17 Defendants prevailed in the non-binding arbitration. After the non-binding
18 arbitration was completed, this litigation resumed.

19 10. On January 30, 2009, Plaintiff filed a Third Amended Complaint.
20 (Docket Entry 130.) On October 7, 2009, Defendants filed a motion for partial
21 summary judgment as to the fraud and deceptive advertising claims in the case,
22 arguing that the insurance program brochure adequately disclosed that claims may
23 be fulfilled with refurbished phones. (Docket Entry 251.) Plaintiff filed an
24 opposition on November 2, 2009. (Docket Entry 287.) On December 1, 2009, the
25 Court denied the motion for partial summary judgment. (Docket Entry 395.) On
26 February 17, 2009, Defendants filed a motion for partial summary judgment as to
27 the breach of fiduciary duty claim in the case. (Docket Entry 131.) Plaintiff filed an
28 opposition on March 9, 2009. (Docket Entry 141.) On March 31, 2009, the Court

1 granted that motion for partial summary judgment. (Docket Entry 165.)

2 11. On December 20, 2009, Plaintiff filed a motion for class certification
3 seeking certification of a class of California residents who purchased Asurion's
4 handset insurance through T-Mobile. (Docket Entry 416.) On April 19, 2010, the
5 Court granted the motion for class certification. (Docket Entry 644.)

6 12. The matter was set for trial, and then continued several times. The
7 case was set to start trial on March 2, 2010. (Docket Entry 122.) The trial was
8 continued to September 2010 (Docket Entry 672, Minutes of June 7, 2010, Status
9 Conference), and then continued to November 15, 2010. (Docket Entry 676.) The
10 case next was scheduled to go to trial on January 25, 2011 (Docket Entry 708), and
11 then continued to February 22, 2011. (Docket Entries 747 and 770.) On January
12 31, 2011, the Court entered an order taking the February 22 trial date off calendar to
13 be reset in the near future. (Docket Entry 785.)

14 13. Because this matter was originally set for trial on March 20, 2010, and
15 continued several times, the parties engaged in extensive trial related motion
16 practice. Class counsel filed eleven motions in limine. Defendants filed eight
17 motions in limine. The parties also opposed the motions in limine. The parties also
18 exchanged proposed jury instructions as well as witness and exhibit lists. The
19 parties also filed competing briefs on the issue of how the case should be tried.

20 14. Then, on May 9, 2011, Defendants filed a motion to compel arbitration
21 arguing that under the recent United States Supreme Court decision of *AT&T*
22 *Mobility LLC v. Concepcion*, 563 U.S. 333 (2011), the absent class members were
23 required to arbitrate individually. (Docket Entry 801.) On May 16, 2011, Plaintiff
24 opposed the motion. (Docket Entry 805.) On June 10, 2011, this Honorable Court
25 granted the motion. (Docket Entry 811.) The Court stayed the case pending
26 completion of individual non-binding arbitrations by the absent class members.

27 15. On September 10, 2012, Plaintiff filed a motion with this Honorable
28 Court for reconsideration of the order based in part on a new case. (Docket Entry

1 820.) On October 25, 2012, the Court denied the motion. (Docket Entry 829.) On
2 March 11, 2013, Plaintiff filed another motion with this Honorable Court for
3 permission to file a petition for interlocutory appeal of the arbitration order with the
4 Ninth Circuit, based in part on another new case. (Docket Entry 830.) On April
5 15, 2013, this Honorable Court granted the motion. (Docket Entry 837.)

6 16. Plaintiff then filed a petition with the Ninth Circuit on May 2, 2013.
7 (Docket Entry 1 in Ninth Circuit Case No. 13-80105.) It was granted on July 11,
8 2013. (Docket Entry 842.) On July 10, 2015, the matter was argued to the Ninth
9 Circuit and submitted. While the matter was under submission, the parties agreed
10 to the instant settlement.

11 **The Extensive Discovery In This Case**

12 17. As with the law and motion, the discovery conducted in this case also
13 was extremely thorough. Specifically, class counsel took the depositions of
14 Asurion employees Beth McCullough on October 23, 2009; Bettie Colombo on
15 October 30, 2009; Bonita Speck on December 2, 2009; Jennifer Davie on October
16 21, 2009; Penny Stafford on October 30, 2009; Richard Reybok on October 21,
17 2009; Richard Schneider on November 3 and December 2, 2009; and, Willard
18 Reagan on October 30 and November 30, 2009. Class counsel also deposed T-
19 Mobile employee Michael Katz on November 19, 2009. Class counsel also
20 deposed defense expert Bruce Foudree on September 20, 2010, and defense expert
21 Gordon Klein on September 28, 2010.

22 18. Class counsel also propounded extensive written discovery. This
23 includes a First Set of Special Interrogatories to Asurion on December 22, 2008; a
24 Second Set of Special Interrogatories to Asurion on July 30, 2009; a Third Set of
25 Special Interrogatories to Asurion on November 4, 2011; a First Set of Special
26 Interrogatories to T-Mobile on March 10, 2009; a Second Set of Special
27 Interrogatories to T-Mobile on June 17, 2009; a Third Set of Special Interrogatories
28 to T-Mobile on November 4, 2009; a First Set of Requests for Production to

1 Asurion on December 22, 2008; a Second Set of Requests for Production to
2 Asurion on June 17, 2009; a Third Set of Requests for Production to Asurion on
3 July 1, 2009; a Fourth Set of Requests for Production to Asurion on September 29,
4 2009; a Fifth Set of Requests for Production to Asurion on October 22, 2009; a
5 Sixth Set of Requests for Production to Asurion on October 29, 2009; a Seventh Set
6 of Requests for Production on Asurion on November 4, 2009; a First Set of
7 Requests for Production to T-Mobile on March 10, 2009; a Second Set of Requests
8 for Production to T-Mobile on June 17, 2009; a Third Set of Requests for
9 Production to T-Mobile on July 1, 2009; a Fourth Set of Requests for Production to
10 T-Mobile on September 29, 2009; a Fifth Set of Requests for Production to T-
11 Mobile on October 22, 2009; a Sixth Set of Requests for Production on T-Mobile
12 on October 29, 2009; and, a Seventh Set of Requests for Production to T-Mobile on
13 November 4, 2009.

14 19. Defendant Asurion produced 103,725 pages of documents which class
15 counsel reviewed.

16 20. The parties also both retained experts on liability and damages, and
17 exchanged expert reports on issues related to liability and damages.

18 21. Class counsel also conducted factual and legal research on the issues in
19 the case outside of the discovery propounded on Defendants. For example, class
20 counsel submitted a Public Records Act request to the California Department of
21 Insurance on December 23, 2010. Through this, class counsel obtained documents
22 which included training materials filed by defendant T-Mobile with the California
23 Department of Insurance. Class counsel also obtained documents via subpoena
24 from Guy Carpenter which is an insurance brokerage which consulted with Asurion
25 regarding the insurance program. Class counsel also interviewed numerous class
26 members about their experiences with the insurance, and interviewed former
27 Asurion employees about defendant Asurion's practices.

28 22. Defendants also conducted discovery, including taking the deposition

1 of the named plaintiff on May 11, 2009; taking the deposition of plaintiff's expert
2 Mike Nguyen on July 29, 2010; and, taking the deposition of plaintiff's expert
3 Robert Hall on August 20, 2010.

4 23. Class counsel also filed a number of motions to compel discovery,
5 including a March 30, 2009, Motion to Compel Further Responses to Requests for
6 Production; a July 10, 2009, Ex Parte Application to Compel Defendants to
7 Produce Witnesses for Deposition; a July 14, 2009, Renewed Motion to Compel
8 Further Responses to Requests for Production; an October 5, 2009, Ex Parte
9 Application (to require that PMQ witnesses be properly prepared on the subject
10 matter of their testimony; and, an October 26, 2009, Motion for Evidentiary
11 Sanctions and to Compel Compliance with the Court's August 4, 2009, Order.

12 Settlement Negotiations

13 24. Throughout the course of this case, there have been multiple attempts
14 at resolving the matter through mediation, specifically through the use of four
15 different mediators from JAMS. At all times, the settlement negotiations were at
16 arms' length and adversarial. Regarding the details, on December 23, 2009, the
17 parties conducted a mediation with Richard Chernick, Esquire, of JAMS in Los
18 Angeles. The mediation did not resolve the matter. On February 2, 2010, the
19 parties participated in a mediation in San Francisco with former California Supreme
20 Court Justice, the Honorable Edward Panelli (Retired), and Catherine Yanni,
21 Esquire, of JAMS. The mediation did not resolve the matter. On June 2, 2010, the
22 parties participated in another mediation with Justice Panelli and Ms. Yanni, this
23 time at JAMS in Los Angeles. That mediation also did not resolve this matter.

24 25. The parties resumed attempts to settle the case in or about June 2014
25 with the assistance of the Honorable Peter Lichtman (Ret.), the former head of
26 settlement of complex litigation and class actions in Los Angeles County. Over
27 the course of approximately one year, through the assistance of Judge Lichtman, the
28 parties engaged in numerous settlement communications. In August of 2015, Judge

1 Lichtman made a mediator's proposal which was accepted by the parties on August
2 15, 2015.

3 **The Terms of The Settlement**

4 26. Under the settlement, Defendants will make a monetary payment of
5 \$4.2 million. This amount will be used to pay notice and claims administration
6 expenses, attorney fees and costs, and monetary payments to the class. The
7 settlement is structured so that depending on the participation rate, any class
8 member who timely submits a claim form will receive a pro rata share of the net
9 settlement fund, capped at \$124 per class member. (Settlement Agreement ¶ 9(e).)
10 This \$124 figure is approximately one and one-half times the average amount of all
11 premiums paid by an individual class member during the Class Period.

12 27. Under no circumstances will any of the money from this settlement
13 revert to Defendants. (Settlement Agreement Paragraph 9(g).) Any residue will go
14 to a non-profit organization to be approved by the Court. The parties will either
15 jointly propose a recipient or submit competing proposals to the Court.

16 28. Further, in addition to the monetary compensation, in substantial part
17 as a result of the filing of this action, Defendants enhanced certain disclosures they
18 make to potential customers. Specifically, Defendants agreed henceforth to
19 "specifically inform" potential customers, at the time they make a point-of-sale
20 decision to enroll in an Asurion wireless protection plan, about (among other
21 things) the potential use of refurbished or different equipment to satisfy claims, two
22 of the prime issues in this case. (Settlement Agreement ¶ 2.)

23 29. In exchange for this consideration, the class members are releasing
24 claims they made or could have made during the class period related to the issues in
25 this case. (Settlement Agreement ¶ 15.)

26 30. The time spent by class counsel on this case will be summarized for
27 this Honorable Court pursuant to California law in conjunction with the Motion for
28 Final Approval. Based on records to date it is a lodestar of approximately \$3.4

1 million in attorney time since 2006, based on hourly rates for the attorneys at The
2 Kick Law Firm, APC already previously approved in other class action matters.
3 Despite this, class counsel has agreed to apply for approval by this Honorable Court
4 of attorneys' fees of only \$1.9 million, a substantial reduction from the \$3.4 million
5 lodestar. Further, there are litigation expenses which have been incurred in excess
6 of \$250,000 (which will be detailed as a part of the Motion for Final Approval) for
7 which reimbursement will be sought. There is also a \$5,000 service award being
8 sought for the class representative, who was very helpful to the prosecution and
9 success of this action. Class counsel will address in the Motion for Final Approval
10 the reasonableness of the attorneys' fee award under California law, and will also
11 present expert testimony on the issue.

12 **Notice and Claims Administration**

13 31. The parties have selected Kurtzman Carson Consulting LLC ("KCC")
14 as the settlement administrator. KCC is the claims administrator that previously
15 sent notice of this Honorable Court's order certifying the case as a class action.
16 Although KCC previously received a class list from Defendants, Defendants will
17 transmit the latest available contact information they have for the class members'
18 addresses to KCC in a useable electronic format. KCC will run the addresses
19 through the National Change of Address Registry and update any addresses that are
20 no longer current. Each class member will be mailed the short form notice by first
21 class mail. The long form notice will be posted on the settlement website. Class
22 members will be able to opt out by mailing an exclusion letter or on the settlement
23 website. Class members will be able to make a claim either by mail or online via
24 the settlement website. Ten days after the Effective Date of the Settlement, class
25 members who make timely valid claims will be mailed a check with their share of
26 the settlement proceeds. This is all documented in the contemporaneously filed
27 declaration of Jonathan Carameros of KCC and the Settlement Agreement.

28 32. Under the proposed schedule, if preliminary approval is granted by this

1 Honorable Court on December 7, the claims administrator will send the notice to
2 class members by December 21. Class members will be able to object by mailing
3 an objection to the settlement administrator by January 26, 2016. Further, in
4 compliance with the Ninth Circuit's case *In re Mercury Interactive Corp. Securities*
5 *Litigation*, 618 F.3d 988, 993 (9th Cir. 2010), Plaintiff's motion for final approval
6 and for attorney fees will be posted on the settlement website by January 11, 2016.

7 **Expected Recovery/ Risks of Litigation**

8 33. It is my opinion that the most likely award the class would have
9 received in aggregate, had the class prevailed at trial, is \$7.8 million. This is
10 detailed in the contemporaneously filed declaration of economist Daniel Linde, and
11 is arrived at as follows. Based on the expert report of defense witness Gordon
12 Klein, the probability of receiving a refurbished phone under the program which is
13 the subject of this class action was 57.7% (Linde Decl. ¶ 13) and the difference in
14 value of the insurance can then be calculated factoring in the value of a refurbished
15 phone versus a new phone (85%). (Linde Decl. ¶ 14.) When applied to the
16 aggregate amount of premiums collected from class members during the class
17 period of approximately \$90.1 million, this then leads to a figure of \$7.8 million in
18 diminution in value as a result of Defendants' use of refurbished phone. (Linde
19 Decl. ¶ 14.) Although Plaintiff advocated for a refund of total premiums, it is my
20 opinion in a fraud case such as this one the much more likely result, if the class had
21 prevailed at trial, would have been an aggregate class award of a \$7.8 million
22 common fund. The \$4.2 million settlement is approximately 54% of this \$7.8
23 million number.

24 34. It is my further opinion based on all of the facts and law relevant to
25 this case that, under the current procedural posture of the case, class members
26 would not have received any recovery, as the expense of arbitrating individually
27 would likely have far exceeded the value of their claims. The average amount paid
28 in premiums at issue in this case by an individual class member is only about \$80,

1 and it cost the class representative alone approximately \$3,250 to go through her
2 non-binding arbitration process in this case (not counting attorney time). As such, I
3 do not believe any other class member was likely go through a non-binding
4 arbitration and hence would not receive anything without this settlement.
5 Therefore, it is my belief that if the status quo had not been changed by the Ninth
6 Circuit, there would not be any recovery at all by the class members. As already
7 stated in Paragraph 4 of this declaration, the Ninth Circuit just last week indicated it
8 was considering *en banc* review, so the question contains considerable risk.
9 Further, Defendants have stated that if Plaintiff prevailed at the 9th Circuit, they
10 would file a motion to decertify the class. While Plaintiff believes such a motion
11 would be meritless, it nonetheless raises a risk, and therefore some discount needs
12 to be applied for that. Also, although Plaintiff felt she had a case with jury appeal,
13 nonetheless this is not a case where there was no disclosure that refurbished phones
14 might be provided; rather, it is a case where Plaintiff argues that the disclosure of
15 that fact was inadequate. There is no guarantee the jury would have decided this
16 unanimously in Plaintiff's favor. Further, if there was a favorable verdict for the
17 class, Defendants likely would have appealed it, and at a minimum this would have
18 added years of additional waiting for class members to receive any compensation,
19 provided they prevailed on appeal.

20 35. In sum, it is my opinion that the settlement is an excellent one for the
21 class, and is fair, reasonable and adequate.

22 I declare under penalty of perjury under the laws of the United States of
23 America that the foregoing is true and correct.

24 Executed this 2nd day of November 2015, in New York, New York.

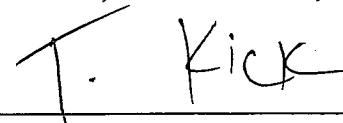
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26 _____
27 Taras Kick
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EXHIBIT 1

Case: 13-56218, 10/27/2015, ID: 9734365, DktEntry: 44, Page 1 of 1

FILED

UNITED STATES COURT OF APPEALS

OCT 27 2015

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

WINEESA COLE, individually and on
behalf of all others similarly situated,

Plaintiff - Appellant,

v.

ASURION CORPORATION, a Delaware
Corporation; T-MOBILE USA INC, a
Delaware Corporation; ASURION
INSURANCE SERVICES INC, a
Tennessee Corporation,

Defendants - Appellees.

No. 13-56218

D.C. No: 2:06-cv-06649-R-JC
Central District of California,
Los Angeles

ORDER

Before: W. FLETCHER, PAEZ, and BERZON, Circuit Judges.

We have reviewed the stipulation of the parties and construe it as a motion for a limited remand. As such, the motion is granted. This appeal is remanded to the district court for the limited purpose of enabling the district court to consider whether it is willing to approve the parties' proposed settlement. If the parties inform this Court that the settlement will be approved, the appeal will be dismissed.

EXHIBIT 2

SETTLEMENT AGREEMENT AND RELEASE

*Wineesa Cole v. Asurion Corporation,
Asurion Insurance Services, Inc., and T-Mobile USA, Inc.*

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF
CALIFORNIA, CASE NO. CV-06-6649-R

PREAMBLE

This Settlement Agreement and Release (the "Agreement") is entered into on October ___, 2015, by and among plaintiff Wineesa Cole ("Named Plaintiff") and all Class Members (as defined below) on whose behalf she is prosecuting this action (each of them a "Plaintiff" and all of them "Plaintiffs"), on the one hand, and defendants Asurion Corporation, a Delaware Corporation, Asurion Insurance Services, Inc., a Tennessee Corporation, and T-Mobile USA, Inc., a Delaware Corporation (each of them a "Defendant" and all of them "Defendants"), on the other hand. All references in this Agreement to a "party" or the "parties" shall refer to a party or the parties to this Agreement.

RECITALS

A. On or about October 18, 2006, Named Plaintiff filed a putative class action complaint captioned *Cole v. Asurion Corporation, Asurion Insurance Services, Inc., and T-Mobile USA, Inc.*, United States District Court for the Central District of California, Case No. CV-06-6649 asserting claims related to allegedly inadequate disclosure of certain cell-phone insurance terms.

B. The Defendants filed various motions, and the Named Plaintiff amended her pleading from time to time, culminating in a Third Amended Complaint, filed on or about January 30, 2009. On or about March 31, 2009, the district court granted the Defendants' motion to dismiss the breach of fiduciary duty cause of action from the Third Amended Complaint. On or about August 12, 2009, Defendants filed Answers to the Third Amended Complaint.

C. On or about April 19, 2009, the district court granted the Named Plaintiff's motion for class certification, defining the class in this action as "all persons who while residing in the State of California purchased cellular telephone insurance from Asurion through T-Mobile USA from August 1, 2003 to April 2, 2008," but excluding "all individuals who released their claims against Defendants pursuant to the settlement agreement in *Carlos Perez v. Asurion Corporation et al.*, Case No. 06-20734 (S.D. Fla.)."

D. In or about September 2010, the Claims Administrator sent notice to all class members. The Claims Administrator received approximately 237 exclusion requests. Net of those exclusions, there are approximately 1,104,763 Class Members.

E. On or about June 10, 2011, the district court granted Defendants' motion to compel arbitration by those class members having a contractual duty to arbitrate, and staying the case as to all Class Members, pending the completion of those arbitrations. On or about April 15, 2013, the district court granted the Named Plaintiff's motion for certification of an interlocutory appeal of the stay.

F. On or about July 11, 2013, the Ninth Circuit granted the Petition for Permission to Appeal. The parties briefed the appeal in 2014, and on or about July 10, 2015, the appeal was argued to the Ninth Circuit and submitted.

G. Since about June 2014, the parties have utilized the mediation services of the Honorable Peter Lichtman (Ret.) of JAMS, and engaged in extensive arms-length telephonic and

written mediation discussions with Judge Lichtman, culminating in a mediator's proposal that was accepted by both sides on or about August 14, 2015, and leading to this settlement.

H. Defendants have entered into this Agreement to resolve any and all claims, controversies and disputes actually or potentially arising out of or relating to any of the allegations that any Class Member made or could have made in the Action, and to avoid the time, burden and expense involved in defending the Action. Defendants do not in any way acknowledge, admit to or concede any of the allegations made in the Action, and expressly disclaim and deny any fault or liability, or any charges of wrongdoing that have been or could have been asserted in the Action. Nothing contained in this Agreement shall be used or construed as an admission of liability, and this Agreement shall not be offered or received in evidence in any action or proceeding in any court or other forum as an admission or concession of liability or wrongdoing of any nature or for any other purpose other than to enforce the terms of this Agreement.

I. Plaintiffs have entered into this agreement to liquidate and recover on the claims asserted in the Action, and to avoid the risk, delay, and uncertainty of continued litigation. Plaintiffs do not in any way concede the Action lacks merit or is subject to any defense.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated into and are an integral part of this Agreement, and in consideration of the mutual promises below, the parties agree as follows:

1. DEFINITIONS. In addition to the definitions contained elsewhere in this Agreement, the following definitions shall apply:

(a) "Action" shall mean this lawsuit, *Cole v. Asurion Corporation, Asurion Insurance Services, Inc., T-Mobile USA, Inc., and Liberty Mutual Insurance Services, Inc.*, in the United States District Court for the Central District of California, Case No. CV-06-6649.

(b) "Agreement" shall mean this Settlement Agreement.

(c) "Bar Date" shall be the date set by the Court as the deadline for Class Members to opt-out of, or to object to this Agreement. The Bar Date shall be thirty (30) days after the date the Court designates in the Preliminary Approval/Notice Order that Notice must be delivered to the Class Members.

(d) "Claim Form" shall mean the form to be completed by Class Members to make a claim in this settlement, and substantially similar to that attached as Exhibit 1.

(e) "Claims Administrator" shall mean Kurtzman Carson Consultants LLC.

(f) "Claims Deadline" shall be the date set by the Court as the deadline for Class Members to make claims under the settlement.

(g) "Class Counsel" shall mean Taras Kick of The Kick Law Firm, APC.

(h) "Class Member" shall mean "all persons who while residing in the State of California purchased cellular telephone insurance from Asurion through T-Mobile USA from August 1, 2003 to April 2, 2008," but excluding "all individuals who released their claims against Defendants pursuant to the settlement agreement in *Carlos Perez v. Asurion Corporation et al.*, Case No. 06-20734 (S.D. Fla.)" (*Perez Action*), as well as those who requested exclusion. The Class Members are thus comprising the approximately 1,104,763 persons who were sent notice in or about September 2010 and did not exclude themselves.

(i) "Class Period" means August 1, 2003 to April 2, 2008.

(j) "Court" shall mean the United States District Court, Central District of California.

(k) "Defendants' Counsel" shall mean Joseph C. Smith, Jr., of Bartlit Beck Herman Palenchar & Scott LLP.

(l) "Effective Date" shall be thirty (30) days after the entry of the Final Approval Order provided no objections are made to this Agreement. If there are objections to the Agreement, then the Effective Date shall be the later of: (1) Ninety (90) days after entry of the Final Approval Order, if no appeals are taken from the Final Approval Order; or (2) if appeals are taken from the Final Approval Order, then thirty (30) days after an Appellate Court ruling affirming the Final Approval Order.

(m) "Eligible Premiums" shall mean any monthly premiums paid by Class Members for defendant Asurion Corporation's Wireless Phone Protection Program (sometimes also called Equipment Protection Plan) during the Class Period.

(n) "Final Approval Hearing Date" shall be the date set by the Court for the hearing on any and all motions for final approval of this Agreement.

(o) "Final Approval Order" shall mean the Order and Judgment approving this Agreement issued by the Court at or after the Final Approval Hearing Date.

(p) "Final Report" shall mean the report prepared by the Claims Administrator of all receipts and disbursements from the Settlement Fund, as described in Section 10, below.

(q) "Long Form Notice" shall mean the notice to Class Members of the settlement provided for under the terms of this Agreement, as ordered by the Court in its Preliminary Approval/Notice Order, and shall refer to that substantially similar to the form of Notice attached hereto as Exhibit 2.

(r) "Motion For Final Approval" shall mean the motion or motions filed by Class Counsel, as referenced in Section 6 below.

(s) "Net Settlement Fund" shall mean the net amount of the Settlement Fund after payment of any court approved attorneys' fees and costs, any court approved service award, the costs of Notice and any fees paid to the Claims Administrator.

(t) "Notice" means "Long Form Notice" and "Short Form Notice" collectively.

(u) "Opt-Out Request" shall mean any Class Member's communication to the Claims Administrator by the Bar Date, whether by U.S. Mail or via the website established by the Claims Administrator for this matter, that the Class Member wishes to opt out of this Agreement.

(v) *Perez Action* shall mean *Carlos Perez v. Asurion Corporation et al.*, Case No. 06-20734 (S.D. Fla.).

(w) "Preliminary Approval/Notice Order" shall mean the Order issued by the Court preliminarily approving this Agreement and authorizing the sending of the Notice to Class Members, as provided in Sections 3 and 4 below.

(x) "Short Form Notice" shall mean the notice to Class Members of the settlement provided for under the terms of this Agreement, as ordered by the Court in its Preliminary Approval/Notice Order, and shall refer to that substantially similar to the form of Notice attached hereto as Exhibit 3.

(y) "Settlement Fund" shall mean the four million two hundred thousand dollars (\$4,200,000) to be paid by Defendants under the terms of this Agreement.

2. **DEFENDANTS' ENHANCED DISCLOSURES.** In substantial part as a result of the filing of this Action, and in connection with the resolution of an investigation brought by the Maryland Attorney General's Office, Defendants agreed on or about April 2, 2008 (*i.e.*, the date on which the Class Period in this Action ends), to enhance certain disclosures they make to potential customers. In particular, Defendants agreed henceforth to "specifically inform" potential customers, at the time they make a point-of-sale decision to enroll in an Asurion wireless protection plan, about five pieces of information pertinent to the potential customer's decision: (i) the cost per month of the coverage; (ii) the applicability and amount of any deductible, (iii) any limit on the amount or number of claims submissions; (iv) the potential use of refurbished or different equipment to satisfy claims; and (v) the customer's right to cancel coverage and whether there is a fee for doing so.

3. **PRELIMINARY SETTLEMENT APPROVAL.** Within ten (10) days after execution of this Agreement, and pursuant to Rule 23 of the Federal Rules of Civil Procedure, Class Counsel shall file a motion seeking a Preliminary Approval/Notice Order. Class Counsel will share a draft of the motion with Defendants in advance, solely to allow them to correct any inadvertent misstatements of fact. Defendants will file a separate joinder in the motion. The proposed Preliminary Approval/Notice Order shall provide preliminary approval of this Agreement and require that the Notice be given to the Class Members as provided in Section 4, below (or as otherwise determined by the Court). Exhibit 4 to this Agreement illustrates the anticipated timeline of events.

4. NOTICE TO THE CLASS.

(a) The Claims Administrator shall send the "Short Form Notice" to all Class Members within ten (10) days after entry of the Preliminary Approval/Notice Order by first class United States mail to the best available mailing addresses for all Class Members. The "Short Form Notice" will be in the form of a single-sided postcard with first class postage sent by US mail and substantially similar to Exhibit 3. Defendants shall provide the Claims Administrator with last known mailing addresses for the Class Members in a reasonably useable electronic format. The Claims Administrator will run the names and addresses through the National Change of Address Registry and update as appropriate. If a mailed "Short Form Notice" is returned with forwarding address information, the Claims Administrator shall re-mail the "Short Form Notice" to the forwarding address.

(b) The "Long Form Notice" and Claim Form shall be posted on a settlement website created by the Claims Administrator. The name of the settlement website will be www.kccllc.net/asurionsettlement (if available; if not available, then a similar name).

(c) The Claims Administrator shall maintain a database showing mail addresses to which each "Short Form Notice" was sent and any "Short Form Notices" that were not delivered, and each claim that was made. A summary report of this information shall be provided to the Class Counsel and Defendants' Counsel at least five (5) days prior to the deadline to file the Motion for Final Approval. The database maintained by the Claims Administrator regarding the "Short Form Notices" and Claims shall also be available to the Parties and the Court upon request.

(d) The "Short Form Notice," "Long Form Notice," and "Claim Form" shall be in a form approved by the Court and substantially similar to Exhibits 3, 2 and 1, respectively, attached hereto. The parties may by mutual written consent make non-substantive changes to the "Short Form Notice," "Long Form Notice," and "Claim Form" without Court approval.

(e) All costs associated with publishing, mailing and administering the Notice and Claim Form as provided for in this Section, and all costs of administration, including but not limited to the Claims Administrator's fees and costs shall be paid out of the Settlement Fund. Defendants shall advance such costs up to two hundred fifty thousand dollars (\$250,000.00) as billed by the Claims Administrator upon entry of the Preliminary Approval Order. Any amounts advanced by Defendants shall be deducted from the amount Defendants are required to pay to fund the Settlement following the entry of the Final Approval Order.

(f) All claims must be submitted prior to the "Claims Deadline."

5. CAFA NOTICES. In compliance with the attorney general notification provision of the Class Action Fairness Act of 2005 ("CAFA"), 28 U.S.C. § 1715, within ten (10) days after the motion for Preliminary Approval is filed, Defendants shall provide notice of this proposed Settlement to the Attorney General of the United States, and the attorney general of

California. Defendants shall file with the Court a certification stating the date(s) on which the CAFA notices were sent. Defendants will provide Class Counsel with any substantive responses received in response to any CAFA notice served by them.

6. **MOTION FOR FINAL APPROVAL.** Within fifteen (15) days after the Claims Administrator sends the Short Form Notice to all Class Members, and provided the conditions in Section 17, below, are satisfied, Class Counsel shall file a Motion for Final Approval of this Agreement and for an Award of Attorney Fees, Litigation Costs, Service Award and Claims Administrator costs, so that same can be heard on the Final Approval Hearing Date.

7. **ENTRY OF JUDGMENT.** The Final Approval Order shall constitute the Court's final judgment in this action. The Court shall retain jurisdiction to enforce the terms of the Final Approval Order.

8. **CLAIM REVIEW PROCESS.** The Claims Administrator will make all determinations regarding the sufficiency and validity of all Claim Forms. If necessary, the Claims Administrator will consult with Class Counsel and Defendants' Counsel to answer any questions or resolve any disputes that arise regarding the validity of any Claims Forms.

9. **THE SETTLEMENT FUND AND DISTRIBUTION.**

(a) Within ten (10) days after the entry of the Final Approval Order, Defendants or one of them shall transfer the Settlement Fund to the Claims Administrator, less amounts advanced to the Claims Administrator (Section 4(e), above). The Settlement Fund shall be the total amount Defendants are obligated to pay to settle and resolve the Action and includes Class Counsel's fees and costs; any service award payments to the Named Plaintiff; costs associated with administering the Notice in accordance with Section 4, above; and any fees paid to the Claims Administrator for services rendered in connection with the administration process. Defendants shall not make any additional or further contributions to the Settlement Fund under any circumstances. In the event a Final Approval Order is not issued, or this Agreement is terminated by either party for any reason, including pursuant to Section 17, below, the portion of the Settlement Fund paid to the Claims Administrator (including accrued interest, if any) less expenses actually incurred by the Claims Administrator, or due and owing in connection with the settlement provided for herein, shall be refunded within two (2) business days to Defendants.

(b) All funds held by the Claims Administrator shall be deemed and considered to be in *custodia legis* of the Court, and shall remain subject to the jurisdiction of the Court, until distributed pursuant to this Agreement.

(c) All funds held by the Claims Administrator at any time shall be deemed to be a Qualified Settlement Fund ("QSF") as described in Treasury Regulation §1.468B-1, 26 C.F.R. §1.468B-1.

(d) The following payments of any court approved attorneys' fees and costs, any court approved service award, the costs of Notice and any fees paid to the Claims

Administrator shall be made from the Settlement Fund as follows, to arrive at the Net Settlement Fund:

(i) Plaintiffs' Fees and Costs. The Court's award of any fees and costs shall be separate from its determination of whether to approve this Agreement. In the event the Court approves the settlement set forth in this Agreement, but declines to award fees and expenses in the amount requested by Class Counsel, the settlement will nevertheless be binding on the parties. If the Court declines to approve the settlement in this Agreement, no award of fees and expenses shall be paid. Further, the parties negotiated and reached agreement on the Class Counsel's fees and costs only after reaching agreement on all other material terms of this Agreement. Plaintiffs' reasonable attorneys' fees and costs, as determined and approved by the Court, shall be paid from the Settlement Fund. Court approved fees and costs shall be paid to Class Counsel from the Settlement Fund fifteen (15) days after Final Approval. Should the judgment approving the settlement be reversed on appeal, Class Counsel shall immediately repay fees and costs to Defendants; should the award of fees and costs be reduced on appeal, Class Counsel shall immediately repay into the Settlement Fund an amount equal to the reduction ordered by the appellate court. Class Counsel has agreed to apply for an attorneys' fee award of one million nine hundred thousand dollars (\$1,900,000) plus costs. Defendants do not object to such an award of attorneys' fees plus costs, and as such agree not to oppose any application for up to this amount.

(ii) Service Award. Named Plaintiff will apply to the Court for a service award of five thousand dollars (\$5,000.00), and Defendants do not object to this amount. Subject to the Court's approval, the service award shall be paid from the Settlement Fund fifteen (15) days after Final Approval.

(iii) Claims Administrator's Fees. The Claims Administrator's fees and costs (in excess of amounts advanced pursuant to Section 4(e), above), including estimated fees and costs to fully implement the terms of this Agreement, as approved by the Court, shall be paid within fifteen (15) days after the Effective Date.

(e) The amount due to each Class Member shall be calculated as follows:

(i) Each Class Member who submits a Claim Form that is accepted by the Claims Administrator shall receive an equal share of the Net Settlement Fund, subject only to the cap described in the subparagraph immediately below.

(ii) Each Class Member's individual payment from the Net Settlement Fund shall be capped at \$124, which is an estimated maximum average recovery that the Class Members could have recovered by proceeding to trial, calculated by multiplying the maximum average compensatory damages per class member available under plaintiffs' disputed total-refund-of-premiums damages model, by

a factor of 1.5 to account for plaintiffs' disputed pursuit of additional damages beyond that.

(f) Individual payments shall be paid to Class Members ten (10) days after the Effective Date, as follows: Each shall be sent a check by the Claims Administrator in the amount as calculated pursuant to this Agreement at the address used to provide the "Short Form Notice," or at such other address as designated by the Class Member. The Class Member will have one-hundred eighty days (180) to negotiate the check. Any uncashed checks will be distributed pursuant to Section 12.

(g) In no event does any portion of the Settlement Fund revert to Defendants.

10. FINAL REPORT TO THE COURT. Within two hundred (200) days after the Effective Date, Class Counsel shall submit to the Court a Final Report, setting forth: (a) the amounts paid to Class Members by the Claims Administrator, (b) any checks not cashed or returned; (c) the efforts undertaken to follow up on uncashed and/or returned checks; and, (d) the total amount of money unpaid to Class Members. The Claims Administrator shall provide a declaration under penalty of perjury setting forth this information, and Class Counsel shall be entitled to verify this information any time upon reasonable request to the Claims Administrator.

11. THE CLAIMS ADMINISTRATOR.

(a) The Claims Administrator shall execute a retainer agreement that shall provide, among other things, that the Claims Administrator shall be bound by and shall perform the obligations imposed on it under the terms of this Agreement. The Claims Administrator has agreed to cap its fees for Notice and administration of this class action at \$486,000, while estimating the actual cost of providing the claims administration services at \$436,332, including the cost of the distribution of the Net Settlement Funds. Defendants will cooperate with Claims Administrator to facilitate the effectuation of Notice and distribution of the Settlement Fund.

(b) The Claims Administrator shall be subject to the jurisdiction of the Court with respect to the administration of this Agreement.

(c) The Claims Administrator shall keep all information regarding Class Members confidential except as otherwise provided herein. All data created and/or obtained and maintained by the Claims Administrator pursuant to this Agreement shall be destroyed twelve (12) months after the Final Report is submitted to the Court, provided that Class Counsel and Defendants' Counsel, or either of them, shall upon request receive a complete digital copy of the Claims Administrator's records, together with a declaration establishing completeness and authenticity, which they may maintain consistent with their own document retention policies.

(d) The Claims Administrator also shall be responsible for timely and properly filing all tax returns necessary or advisable, if any, with respect to the Settlement Fund. Except as provided herein, Class Members shall be responsible for their own tax reporting of payments or credits received under the terms of this Agreement.

(e) Within one hundred-ninety (190) days after the Effective Date, the Claims Administrator shall prepare a declaration which shall set forth the total payments issued to Class Members by the Claims Administrator, the total amount of any checks uncashed and/or returned, the efforts made to follow up on uncashed and undeliverable checks, and the total amount of money being held by the Claims Administrator.

12. **CY PRES PAYMENT.** Thirty (30) days after the Final Report, the total amount of any uncashed checks, and amounts held by the Administrator at the time of the Final Report, shall be paid by the Claims Administrator to one or more cy pres recipients as approved by the Court. The parties may, jointly or separately, propose one or more cy pres recipients to the Court for its consideration.

13. **OPT-OUTS.**

(a) A Class Member who wishes to opt out of this Agreement, and from the release of claims and defenses provided for under the terms of this Agreement, shall submit an Opt-Out Request to the Claims Administrator. For an Opt-Out Request to be valid, it must be postmarked (if by U.S. Mail) or submitted (if via the website) by 11:59 p.m., Pacific Standard Time, on the Bar Date. Any Opt-Out Request shall identify the Class Member using the identification number provided by the Claims Administrator, and state that the Class Member wishes to opt out of the Agreement. Opt-Out Requests sent by U.S. Mail shall be signed and dated.

(b) The Claims Administrator shall maintain a list of persons who have opted out and shall provide such list to Defendants' Counsel and Class Counsel at least fifteen (15) days prior to the Final Approval hearing. The Claims Administrator shall retain the originals of all Opt-Out Requests (including the envelopes with the postmarks for any U.S. Mail). The Claims Administrator shall make the original Opt-Out Requests available to Class Counsel, Defendants' Counsel and/or the Court upon two (2) court days written notice.

(c) Any Class Member who does not opt out by the Bar Date is irrevocably bound by this Agreement, including but not limited to the release provisions, whether or not the Class Member submits a claim or receives any compensation, and regardless of the amount of any compensation the Class Member receives, or any other eventuality.

14. **OBJECTIONS.**

(a) Any Class Member, other than a Class Member who timely submits an Opt-Out Request, may object to this Agreement.

(b) To be valid and considered by the Court, the objection must be sent by first class mail, postage pre-paid, to the Court and the Claims Administrator. The objection must be postmarked on or before the Bar Date, and must include the following information:

(i) A heading referring to the *Cole v. Asurion* Action;

(ii) The objector's name, address, telephone number, and the contact information for any attorney retained by the objector in connection with the objection or otherwise in connection with the Litigation;

(iii) A statement of the factual and legal basis for each objection and any exhibits the objector wishes the Court to consider in connection with its objection;

(iv) A statement as to whether the objector intends to appear at the Final Approval Hearing, either in person or through counsel, and, if through counsel, identifying the counsel by name, address and telephone number; and

(c) Class Counsel and/or Defense Counsel shall file any responsive pleadings within seven (7) days of the Final Approval hearing.

15. **RELEASE.** Except as to the rights and obligations provided for under the terms of this Agreement, Named Plaintiff, on behalf of herself and all of her respective predecessors, successors, assigns, devisees, relatives, heirs, legatees, insurers and agents, whether past, present or future, and each of the Class Members, including their respective predecessors, successors, assigns, devisees, relatives, heirs, legatees, insurers and agents, whether past, present or future, hereby release and forever discharge Defendants, along with every other person and entity, named or unnamed, that ever was or could have been a defendant in the Action (collectively, the "Defendant Releasees"), and all of the Defendant Releasees' respective predecessors, successors, parents, subsidiaries, divisions, employees, affiliates, assigns, officers, directors, shareholders, representatives, attorneys, insurers and agents, whether past, present or future, from any and all charges, complaints, claims, debts, liabilities, demands, obligations, costs, expenses, actions, and causes of action of every nature, character, and description, whether known or unknown, asserted or unasserted, suspected or unsuspected, fixed or contingent, which Named Plaintiff and Class Members who do not opt out of this Agreement made, could have made, or in any way arise out of any allegations that were or could have been made by any Class Member concerning alleged wrongdoing during the class period (consistent with the class definition) in the Action.

16. **WAIVER OF CALIFORNIA CIVIL CODE SECTION 1542.** Named Plaintiff, for herself and on behalf of Class Members who do not opt out of this agreement, agrees to waive ANY AND ALL PROVISIONS, RIGHTS AND BENEFITS CONFERRED BY Section 1542 of the California Civil Code, which provides as follows:

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.

OR BY ANY LAW OR STATE OR TERRITORY OF THE UNITED STATES, OR PRINCIPLE OF COMMON LAW,

WHICH IS SIMILAR, COMPARABLE, OR EQUIVALENT TO
SECTION 1542 OF THE CALIFORNIA CIVIL CODE.

Named Plaintiff, on behalf of herself and the Class Members, hereby acknowledges that she and they may hereafter discover facts different from, or in addition to, those which are now known and believed to be true, or should now be known or should be understood to be true with respect to the release provided for in Section 15, and they agree that said release is now and will remain effective notwithstanding the existence, and/or subsequent discovery, of such additional facts.

17. CONDITIONS TO SETTLEMENT.

(a) This Agreement shall be subject to and is expressly conditioned on the occurrence of all of the following events:

(i) The Court has entered the Preliminary Approval/Notice Order, as contemplated by Sections 3 and 4 above;

(ii) The Court has entered the Final Approval Order as contemplated by Sections 6 and 7 above, and all objections, if any, to such order are overruled, and all appeals taken from the Court's Final Approval Order are resolved in favor of approval; and

(iii) The Effective Date has occurred.

(b) If all of the conditions specified in Section 17(a) are not met, then this Agreement shall be cancelled and terminated.

(c) In the event this Agreement fails to become effective in accordance with Sections 17(a) and/or (b) immediately above, then the parties shall be restored to their respective positions in the Action as of the effective date of this Agreement, with the exception of moneys advanced to the Claims Administrator by Defendants and actually spent by the Claims Administrator in performing actions required by this Agreement. In such event, the terms and provisions of this Agreement shall have no further force and effect with respect to the parties and shall not be used in the Action or in any other action or proceeding for any other purpose, and any dismissal, judgment or order entered by this Court in accordance with the terms of this Agreement shall be treated as vacated, *nunc pro tunc*.

18. REPRESENTATIONS.

(a) The parties to this Agreement represent that they have each read this Agreement and are fully aware of and understand all of its terms and the legal consequences thereof. The parties represent that they have consulted or have had the opportunity to consult with and have received or have had the opportunity to receive advice from legal counsel in connection with their review and execution of this Agreement.

(b) The parties have not relied on any representations, promises or agreements other than those expressly set forth in this Agreement.

(c) The parties represent that there has not been any assignment, transfer, conveyance or other disposition of any rights, obligations or liabilities released under the terms of this Agreement, and that there will be no assignment or transfer or purported assignment or transfer to any person or entity whatsoever, of any claim, debt, liability, demand, obligation, cost, expense, action, defense or cause of action hereinabove released.

(d) The Named Plaintiff, on behalf of the Class Members, represents that she has made such inquiry into the terms and conditions of this Agreement as she deems appropriate, and that by executing this Agreement, she believes the Agreement and all the terms and conditions set forth herein, are fair and reasonable to the class.

(e) The Named Plaintiff represents that she has no conflicts or other personal interests that would in any way impact her representation of the Class Members in connection with the execution of this Agreement.

(f) Defendants represent and warrant that they have obtained all corporate authority necessary to execute this Agreement.

19. **FURTHER ASSURANCES.** Each of the parties hereto agrees to execute and deliver all such further documents consistent with this Agreement, and to take all such further actions consistent with this Agreement, as may be required in order to carry the provisions of this Agreement into effect, subject to Class Counsel's obligation to protect the interests of the Class Members. Warranties, representations, agreements, and obligations contained in this Agreement shall survive the execution and delivery of this Agreement and shall survive any and all performances in accordance with this Agreement.

20. **APPLICABLE LAW.** This Agreement shall be governed by and interpreted, construed, and enforced pursuant to the laws of the State of California.

21. **NO ORAL WAIVER OR MODIFICATION.** No waiver or modification of any provision of this Agreement or of any breach thereof shall constitute a waiver or modification of any other provision or breach, whether or not similar, nor shall any actual waiver or modification constitute a continuing waiver. No waiver or modification shall be binding unless executed in writing by the party making the waiver or modification.

22. **ENTIRE AGREEMENT.** This Agreement, including the exhibits and schedules attached hereto, constitutes the entire agreement made by and between the parties pertaining to the subject matter hereof, and fully supersedes any and all prior or contemporaneous understandings, representations, warranties, and agreements made by the parties hereto or their representatives pertaining to the subject matter hereof. No extrinsic evidence whatsoever may be introduced in any judicial proceeding involving the construction or interpretation of this Agreement, except as allowed by law.

23. **BINDING ON SUCCESSORS.** This Agreement shall inure to the benefit of, and shall bind, each of the parties hereto and their successors.

24. **SEVERABILITY.** In the event any one or more of the provisions of this Agreement is determined to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained in this Agreement will not in any way be affected or impaired thereby.

25. **COUNTERPARTS AND FACSIMILE SIGNATURES.** This Agreement may be executed and delivered in separate counterparts, each of which, when so executed and delivered, shall be an original, but such counterparts together shall constitute but one and the same instrument and agreement. Facsimile and pdf signature pages shall have the same force and effect as original signatures.

26. **NOTIFICATION.** Any notice to be given to Class Counsel and/or Named Plaintiff shall be sent by email as follows:

Taras Kick
The Kick Law Firm, APC
201 Wilshire Boulevard
Santa Monica, California 90401
Telephone: (310) 395-2988
taras@kicklawfirm.com

Any notice to be given to Defendants under the terms of this Agreement shall be sent by email as follows:

Joseph C. Smith, Jr.
Bartlit Beck Herman Palenchar & Scott LLP
1899 Wynkoop Street
8th Floor
Denver, CO 80202
Telephone: (303) 592-3100
joe.smith@bartlit-beck.com

Any notice to the Claims Administrator shall be sent by email as follows:

Kurtzman Carson Consultants LLC
2335 Alaska Avenue
El Segundo, California 90245
Attn: Patrick Passarella
Telephone: (415) 798-5961
ppassarella@kccllc.com

27. **MEDIA INQUIRIES.** The Parties and their counsel agree not to issue any press releases or the like regarding the resolution of this Action. If any Party or counsel receives any

media or press inquiry regarding the resolution of this Action, the Party or counsel shall either not respond, respond with "no comment," or respond by referring the inquiring media or press to the Court file.

IN WITNESS WHEREOF, the parties have entered this Agreement as of the date set forth below.

Dated: October __, 2015

Asurion Corporation

By (signature): _____

Printed Name: _____

Its: _____

Dated: October __, 2015

Asurion Insurance Services, Inc.

By (signature): _____

Printed Name: _____

Its: _____

Dated: October __, 2015

T-Mobile USA, Inc.,

By (signature): _____

Printed Name: _____

Its: _____

Dated: October 22, 2015

Wineesa Cole, an individual on behalf of
herself and those she represents

By: Wineesa Cole
Wineesa Cole

APPROVED AS TO FORM:

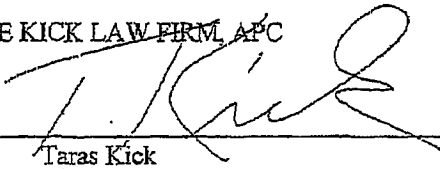
Dated: October ____, 2015

Bartlit Beck Herman Palenchar & Scott LLP

By: _____
Joseph C. Smith, Jr.
Attorneys for Defendants

Dated: October 22 2015

THE KICK LAW FIRM, APC


By:  _____
Taras Kick
Attorneys for Plaintiffs

media or press inquiry regarding the resolution of this Action, the Party or counsel shall either not respond, respond with "no comment," or respond by referring the inquiring media or press to the Court file.

IN WITNESS WHEREOF, the parties have entered this Agreement as of the date set forth below.

Dated: October 30, 2015

Asurion Corporation


By (signature): 

Printed Name: Gus Puryear

Its: Senior VP, General Counsel

Dated: October 30, 2015

Asurion Insurance Services, Inc.


By (signature): 

Printed Name: Gus Puryear

Its: Senior VP, General Counsel

Dated: October __, 2015

T-Mobile USA, Inc.,

By (signature): 

Printed Name: David A. Miller
Executive VP & General Counsel

Its: _____

Dated: October 22, 2015

Wineesa Cole, an individual on behalf of
herself and those she represents


By: 
Wineesa Cole

EXHIBIT 1

Asurion Lawsuit Administration Center
P.O. Box #####
Providence, RI #####

TBD

«Barcode»

Claim #: TBD-«ClaimID» «MailRec»
«First1» «Last1»
«CO»
«Addr1» «Addr2»
«City», «ST» «Zip»
«Country»

Name/Address Changes (if any):

First Name _____ Last Name _____
Address _____
City _____ State _____ Zip _____
Home phone: (____) _____
Alternate phone: (____) _____
E-Mail Address: _____
UNIQUE IDENTIFYING CLAIM NUMBER

Winessa Cole v. Asurion Corp., et al., Case No. CV-06-6649-R

CLAIM FORM

If you purchased cellular telephone insurance from Asurion through T-Mobile, while residing in the State of California, from August 1, 2003 to April 2, 2008 ("Class Period"), you may file a claim for a payment. All payments will be in the same amount, which will depend on the total amount available to make payments, as well as the number of valid claims. For more information on how payments will be calculated, go to www.kccllc.net/asurionsettlement.

In order to receive a payment, you must complete and return this Claim Form to the Administrator postmarked no later than Month 00, 2015 or you can file a Claim Form on the settlement website no later than [DATE/TIME]. You can access the online Claim Form at www.kccllc.net/asurionsettlement.

I. Claimant Information

First Name _____ Middle Initial _____ Last Name _____
Street Address _____
City _____ State/Country _____ Zip/Postal Code _____

T-Mobile Cellular Telephone Phone Number(s) for the Insured Device(s)

Name of the person that appears on the contract for insurance, if not you (as it appears on the contract)

Name on Contract

II. Certification

I have read and am familiar with the contents of the Notice accompanying this Claim Form, and I certify that the information I have set forth in the foregoing Claim Form is true, correct and complete to the best of my knowledge. I certify that I purchased cellular telephone insurance from Asurion through T-Mobile, while residing in the State of California, from August 1, 2003 to April 2, 2008.

Signature of Claimant

Date

EXHIBIT 2

**NOTICE OF CLASS ACTION SETTLEMENT WITH ASURION CORP.,
ASURION INSURANCE SERVICES, INC., AND T-MOBILE USA, INC.**

A court authorized this notice. This is not a solicitation from a lawyer.

This notice summarizes your rights and options in this settlement.

WHAT IS THE CLASS ACTION LAWSUIT ABOUT? The class action lawsuit is called *Wineesa Cole v. Asurion Corp., et al.*, Case No. CV-06-6649-R, and is pending in the United States District Court for the Central District of California. The lawsuit alleges that Asurion and T-Mobile offered and sold cellular telephone insurance without adequately disclosing certain terms of the insurance policy. The Court overseeing the class action lawsuit did not make a decision regarding the claims made in the lawsuit. Instead, the plaintiff (Wineesa Cole) and Asurion and T-Mobile ("Defendants") have agreed to settle the lawsuit and resolve the claims.

WHO IS INCLUDED IN THE CLASS ACTION SETTLEMENT? The Class includes all persons who, while residing in the State of California, purchased cellular telephone insurance from Asurion through T-Mobile from August 1, 2003 to April 2, 2008 ("Class Period"). All individuals who released their claims against Defendants as part of the settlement agreement in *Carlos Perez v. Asurion Corporation et al.*, Case No. 06-20734 (S.D. Fla.) are excluded from this settlement.

WHAT DOES THE SETTLEMENT PROVIDE? The Defendants have agreed to pay \$4.2 million into a Settlement Fund to end the class action lawsuit. The Settlement Fund will be used to pay Class Counsel's fees and expenses, a service award to the named plaintiff, and the Claims Administrator's fees and costs, and to make payments to Class Members. The portion of the Settlement Fund available to make payments to Class Members is called the Net Settlement Fund. Each Class Member who submits a valid claim will receive an equal share of the Net Settlement Fund, up to a cap amount that represents an estimated maximum average recovery that the Class Members could have recovered by proceeding to trial. The size of the payment received by each Class Member who submits a valid claim will depend on the size of the Net Settlement Fund and the number of Class Members who submit valid claims.

HOW DO YOU RECEIVE A PAYMENT FROM THIS SETTLEMENT? You must complete and mail a Claim Form so it is postmarked by [insert date], or submit one online at www.kccllc.net/asurionsettlement by [insert time and date].

HOW DO YOU OBJECT TO THE SETTLEMENT? If you do not like the settlement or one or more of its terms you may object to it. The Court will consider your objection before deciding whether to grant final approval to the settlement. To object you must send a letter by first class mail with postage pre-paid to the Court and the Claims Administrator. Your objection must be postmarked on or before [insert date] and include (1) the case name, *Cole v. Asurion Action*; (2) your name, address, telephone number, and the contact information for your attorney if you have hired one to represent you in connection with your objection or in this litigation; (3) the factual and legal basis for each objection, as well as any supporting exhibits you would like the Court to consider; and (4) a statement indicating whether you or your attorney (including the attorney's name, address and telephone number) intends to appear at the Final Approval Hearing.

The Court's address is United States Courthouse, c/o Clerk of the Court, 312 North Spring Street, Los Angeles, California 90012-4701. The Claims Administrator's address is Asurion Lawsuit Administration Center, P.O. Box 6177, Novato, CA 94948-6177.

HOW DO YOU EXCLUDE YOURSELF FROM THE SETTLEMENT? If you do not want to be legally bound by the settlement and you want to keep any rights you may have to sue or

continue to sue Asurion or T-Mobile as part of any other lawsuit involving the claims made in this lawsuit and resolved by this settlement, you must exclude yourself from this settlement. To exclude yourself you must mail an Exclusion Letter to the Claims Administrator at Asurion Lawsuit Administration Center, P.O. Box 6177, Novato, CA 94948-6177 or submit an Exclusion Letter online at www.kccllc.net/asurionsettlement. To be valid, if mailed, your Exclusion Letter must be signed, dated, and postmarked by [insert date], and include your name and a sentence stating that you wish to exclude yourself from the *Cole v. Asurion Action*. If filed online, your Exclusion Letter must be completed and submitted by [insert time and date]. If you exclude yourself, you cannot receive a settlement payment or object to the settlement.

WHAT HAPPENS IF YOU DON'T DO ANYTHING? If you do nothing, or if you file a claim form, or if you submit an objection, you are choosing to stay in the Class. This means you will be legally bound by all orders and judgments of the Court in this case, and you will not be able to sue or continue to sue Asurion or T-Mobile as part of any other lawsuit involving the claims made in this lawsuit and resolved by this settlement.

WHAT ARE YOU GIVING UP IN EXCHANGE FOR THE SETTLEMENT? Unless you exclude yourself, you will be legally bound by all orders and judgments of the Court in this case, and you will not be able to sue or continue to sue Asurion or T-Mobile as part of any other lawsuit involving the claims made in this lawsuit and resolved by this settlement. The Specific claims you are giving up are called "Released Claims". The Released Claims are explained in necessary and accurate legal terminology in Section 15 of the Settlement Agreement and Release. A copy of the Settlement Agreement and Release can be viewed online at the settlement website, www.kccllc.net/asurionsettlement.

WHO REPRESENTS YOU? The Court appointed The Kick Law Firm, APC to represent you as Class Counsel. You don't have to pay Class Counsel for their services. Instead, Class Counsel will ask the Court to award them \$1.9 million in fees, plus costs, as well as a \$5,000 service award to the named plaintiff. If the Court grants Class Counsel's request, the fees, expenses and award would be deducted from the Settlement Fund, before making payments to Class Members. You may hire your own lawyer to appear in Court for you, but if you do, you have to pay that lawyer.

WHEN IS THE COURT'S FINAL APPROVAL HEARING? The Court will hold a Final Approval Hearing at __:0 __m. on ____ day, Month __, 2016 at the United States Courthouse, 312 North Spring Street, Los Angeles, California 90012-4701. At this hearing, the Court will consider whether the settlement is fair, reasonable, and adequate. The Court will also consider whether to approve Class Counsel's request for an award of attorneys' fees and expenses, as well as the plaintiff's service award. If there are objections, the Court will consider them, and may also listen to people who have asked to speak at the hearing. After the hearing, the Court will decide whether to approve the settlement.

HOW CAN YOU GET MORE INFORMATION? If you have questions or would like more information, visit www.kccllc.net/asurionsettlement, call toll-free 1-877-427-8469, or write to Asurion Lawsuit Administration Center, P.O. Box 6177, Novato, CA 94948-6177.

EXHIBIT 3

**Settlement reached with
Asurion Corp., Asurion
Insurance Services, Inc.,
and T-Mobile USA, Inc.**

You could be eligible for a
payment.

Please read this Notice.

www.kccllc.net/asurionsettlement

1-877-427-8469

Asurion Lawsuit Administration Center
P.O. Box 6198
Novato, CA 94948-6198

First-Class
Mail
US Postage
Paid
Permit #

«Barcode»

Postal Service: Please do not mark barcode

ASC—«ClaimID» «MailRec»

«First» «Last»

«CO»

«Addr1» «Addr2»

«City» «ST» «Zip» «Country»

AUE

**NOTICE OF CLASS ACTION SETTLEMENT WITH ASURION CORP.,
ASURION INSURANCE SERVICES, INC., AND T-MOBILE USA, INC.**

A court authorized this notice. This is not a solicitation from a lawyer. This notice summarizes your rights and options.

The class action lawsuit, *Winesa Cole v. Asurion Corp., et al.*, Case No. CV-06-6649-R, is pending in the U.S. District Court for the Central District of California. The lawsuit alleges that Asurion and T-Mobile ("Defendants") offered and sold cellular telephone insurance without adequately disclosing certain terms of the insurance policy. The Court did not make a decision regarding the claims made in the lawsuit. Instead, the plaintiff and Defendants have agreed to settle the lawsuit. The Class includes all persons who, while residing in the State of California, purchased cellular telephone insurance from Asurion through T-Mobile from August 1, 2003 to April 2, 2008 ("Class Period") (except all individuals who released their claims against Defendants as part of the settlement agreement in *Carlos Perez v. Asurion Corporation et al.*, Case No. 06-20734 (S.D. Fla.), who are excluded from this settlement).

THE SETTLEMENT: The Defendants have agreed to pay \$4.2 million into a Settlement Fund to end the class action lawsuit. The Settlement Fund will be used to pay Class Counsel's fees and expenses, a service award to the named plaintiff, and the Claims Administrator's fees and costs, and to make payments to Class Members. Each Class Member who submits a valid claim will receive a payment. All payments will be in the same amount, which will depend on the total amount available to make payments to Class Members, as well as the number of valid claims submitted. For more information on how payments will be calculated, go to www.kccllc.net/asurionsettlement.

GETTING A PAYMENT: You must complete and mail a Claim Form postmarked by **NOTE THIS WILL BE A DIFFERENT DATE THAN OBJECTION/OPT OUT DATE Month 00, 2016**. Claim Forms are available at www.kccllc.net/asurionsettlement or by calling 1-877-427-8469. Claim Forms may also be submitted online.

OTHER OPTIONS: If you do nothing, you will be legally bound by the settlement, you will release claims, and you will not receive a payment. If you do not want to be legally bound by the settlement, you must exclude yourself by **Month 00, 2015**. Unless you exclude yourself, you will not be able to sue Asurion or T-Mobile for the claims made in this lawsuit and released by this settlement. If you don't exclude yourself, you may object and notify the Court that you or your lawyer intends to appear at the Court's final approval hearing. Objections are due by **Month 00, 2015**. See further details on the website about this.

FINAL APPROVAL HEARING: The Court will hold a Final Approval Hearing on **Month 00, 2016** to consider whether to approve the settlement; attorneys' fees of up to \$1.9 million plus expenses; and a \$5,000 service award to the named plaintiff. If approved, these amounts, as well as the cost of administering the settlement will be deducted from the Settlement Fund before calculating Class Member payments. You or your lawyer may appear at the hearing at your own expense.

MORE INFORMATION: Visit www.kccllc.net/asurionsettlement, call toll-free 1-877-427-8469, or write to Asurion Lawsuit Administration Center, P.O. Box 6177, Novato, CA 94948-6177.

1 THE KICK LAW FIRM, APC
Taras Kick (State Bar No. 143379) (taras@kicklawfirm.com)
2 Thomas A. Segal (State Bar No. 222791) (thomas@kicklawfirm.com)
G. James Strenio (State Bar No. 177624) (james@kicklawfirm.com)
3 201 Wilshire Blvd.
Santa Monica, California 90401
4 Telephone: (310) 395-2988
Facsimile: (310) 395-2088

5
6 Counsel for Plaintiff Wineesa Cole
and the Certified Class
7

8
9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA**

11 Wineesa Cole, individually and on
12 behalf of all others similarly situated,

13 Plaintiff,

14 vs.

15 Asurion Corporation, a Delaware
Corporation, Asurion Insurance
16 Services, Inc., a Tennessee
Corporation, T-Mobile USA, Inc., a
17 Delaware Corporation, Liberty Mutual
Insurance Company, a Massachusetts
18 Corporation, and DOES 1 through 500,

19 Defendants.
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Case No. CV-06-6649-R (JCx)

Honorable Manuel Real

**DECLARATION OF DANIEL
LINDE IN SUPPORT OF MOTION
FOR PRELIMINARY APPROVAL
OF CLASS ACTION SETTLEMENT**

Date: December 7, 2015

Time: 10:00AM

Ctrm: 8

DECLARATION OF DANIEL LINDE

I, Daniel Linde, declare:

1. I am an independent economist providing economic and business consulting services. These services include analysis and valuation of damages, analysis of financial records, and forensic accounting. I have been Chief Financial Officer of three companies, including a national beverage company and the U.S. division of a Korean security equipment manufacturer. I also worked as an Analyst for Analysis Group, Inc., an economic, financial and strategy consulting firm. In addition, I worked at USBX Advisory Services LLC, where I provided business valuation and fairness opinion services. I hold an M.B.A. in Finance from Pepperdine University, and a B.A. in Economics from Washington University in St. Louis. Attached as Exhibit 1 is a true and correct copy of my curriculum vitae.

2. I have personal knowledge of the information in this declaration, and if called as a witness, I could and would testify competently that they are true.

3. I have been asked by Plaintiff to quantify the aggregate class damages in this matter.

4. My calculations and opinions are based on case documents and case data, including the Asurion Damages Model Brief (Document 765); Deposition of Roger Anthony Detter, dated May 25, 2006 (ASU 1597-1765); Deposition of Richard Schneider, dated December 2, 2009; Deposition of Gordon Klein, dated September 28, 2010; Asurion Invoices and Spreadsheets (ASU 0809-70, ASU 0921-2, ASU

1 2257-9). The data was electronically transmitted to me by Plaintiff's counsel. I also
2 reviewed and considered the expert reports of Gordon L. Klein dated August 10,
3 2010 and Mike H. Nguyen dated June 21, 2010 in preparing this declaration.

4
5 5. My work on this matter was performed under the American Institute of
6 Certified Public Accountants' Statement on Standards for Consulting Services.

7
8 6. It is my understanding that the proposed settlement negotiated on behalf of
9 the Class affords each Class member the ability to apply for the reimbursement of
10 up to an amount which I calculate as approximately equal to one and one-half times
11 the average total premium paid by an individual Class member during the Class
12 period, *i.e.* up to \$124.

13
14 7. As my analysis shows below, if the Class prevailed at trial on liability, \$124
15 would be substantially more than any individual Class member would have been
16 likely to receive at trial. This is because \$124 is approximately one and one-half
17 times *the average total premium paid* by an individual Class member during the
18 Class period. However, my measure of the appropriate Class damages is the
19 average *total difference* in premium paid, reflecting the value of what was received
20 versus what allegedly had been represented would be received. This would result
21 in a lower total.
22

23
24 8. What follows is my calculation of the amount of aggregate Class damages.
25
26
27
28

1 assuming liability on the part of Defendants.

2 9. Understanding damages in this matter starts with an understanding of the
3 total premiums paid by Class members during the Class period. Both Plaintiff and
4 Defendants hired experts to assess the amount.
5

6 10. Plaintiff's expert Mike H. Nguyen and Defendant's expert Gordon L. Klein
7 both used a similar approach to arrive at their conclusions, except in one respect.
8 For the churn rate, Mr. Klein used the midpoint of the 3% to 6% range for the
9 Asurion churn rate given in the deposition of Richard Schneider, Vice President of
10 Supply Chain Management at Asurion (Klein Report, p.20; Deposition of Richard
11 Schneider, December 2, 2009, p.543), while Mr. Nguyen used a T-Mobile churn
12 rate not specific to the insurance at issue in this case as an approximation. (Nguyen
13 Report, p.3, 4)
14
15
16

17 11. Given that Mr. Klein's estimate, otherwise based on the same information as
18 Mr. Nguyen's, uses the churn rate provided in the sworn testimony of an Asurion
19 employee as opposed to the more general churn rate experienced in the cellular
20 service industry, I accept Mr. Klein's estimate in this regard to be the best estimate
21 of total premiums. Using the methodology of Plaintiff's expert but then applying
22 this churn rate, Mr. Klein calculated the total premiums paid by Class members
23 during the Class period to be \$90,103,795. (Klein Report, Exhibit 7)
24
25
26

27 12. The core allegations in this lawsuit, as I understand them from the documents
28 I have reviewed, pertain to an alleged expectation by Class members that if their

1 phone was replaced it would be replaced by an identical new phone, without
2 Defendants adequately disclosing that the replacement phones are sometimes
3 refurbished rather than new. (Motion for Preliminary Approval, p. 3.) In a matter
4 such as this pertaining to what was alleged to have been promised versus received,
5 from an economic value perspective, aggregate Class damages equal the difference
6 between expected or bargained-for benefits and those actually received. For the
7 purpose of my analysis, I have incorporated benefits actually received in two main
8 ways.

11
12 13. First, the defense expert report of Mr. Klein documents that refurbished
13 phones were used 57.7% of the time. (Klein Report, Exhibit 9) As such, given that
14 the refurbished phones were used 57.7% of the time rather than all of the time, the
15 total premium amount should be reduced to that same percentage of the total
16 premium or \$51,989,889. ($\$90,103,795$ of total premium * 57.7%)

18
19 14. Second, the cost to Defendants of providing a refurbished phone to a
20 subscriber was 85% of the cost of providing a new phone. (Klein Report, p.25)
21 Therefore, while Class members may have expected \$51,989,889 of value as shown
22 above in paragraph 13, the value of what they actually received is only \$44,191,406
23 ($\$51,989,889$ * 85%). The difference between these two numbers, or diminished
24 benefit of \$7,789,483, is the aggregate Class damages. ($\$51,989,889$ - \$44,191,406)
25
26
27
28

15. This difference in value alleged to have been expected by Class members versus value actually received is formalized in the following calculation of aggregate Class damages:

		<u>Source</u>
Total premiums (a)	\$90,103,795	Klein Report, Ex 7
Probability of receiving refurbished phone (b)	57.7%	Klein Report, Ex 9
Value of refurbished phone relative to new phone (c)	85%	Klein Report, p. 25
Diminished benefit or damages	\$7,798,483	(a) * (b) * (1-(c))

16. Based on the information available to me and assuming liability on the part of the Defendant, I estimate the aggregate Class damages to be \$7.8 million.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on October 31, 2015, in London, England.


Daniel Linde

UNITED STATES DISTRICT COURT,
CENTRAL DISTRICT OF CALIFORNIA

Winessa Cole, et al.,

Plaintiff,

v.

Asurion Corporation, Asurion Insurance
Services, Inc., and T-Mobile, USA, Inc.

Defendants.

Case No. CV-06-6649-R

**DECLARATION OF JONATHAN D.
CARAMEROS RE: NOTICE
PROCEDURES**

I, **Jonathan D. Carameros**, declare as follows:

1. I am a Vice President of Operations at Kurtzman Carson Consultants LLC ("KCC"), located at 75 Rowland Way, Suite 250, Novato, California. I am over 21 years of age and am not a party to this action. I have personal knowledge of the facts set forth herein and, if called upon as a witness, could and would testify competently thereto. I have 10 years of experience in class action settlement administration. Over the course of my career, I have managed more than 250 class actions and am an expert in claims processing and class action administration.

2. KCC is a class action administrator that specializes in providing comprehensive class action services including, but not limited to, pre-settlement consulting, email and physical disbursements, tax reporting, settlement fund escrow and reporting, class member data management, legal notification, call center support, and other services critical to the effective administration of class actions. KCC has developed efficient, secure and cost-effective methods to properly handle the voluminous data and mailings associated with the noticing, claims processing, and disbursement requirements of settlements to ensure the orderly and fair treatment of class members and all parties of interest.

3. KCC has been retained to serve as Settlement Administrator in this action, and among other things, to develop with the parties' input the Short Form Notice, Long Form Notice and Claim Form. Attached hereto are copies of the Short Form Notice, Long Form Notice and Claim Form as Exhibit A. In my experience, these forms are consistent with other similar class actions of this nature

1 and are designed to be easily understood by Class Members.

2 4. KCC will mail a Short Form Notice to class members via First Class U.S. Mail, after first
3 running the addresses which are provided to KCC by the Defendant through the National Change of
4 Address database. All Notices that are returned to KCC by the U.S. Post Office with a forwarding
5 address will be re-mailed to the new address and the class member database will be updated to reflect
6 the most recent address. In my experience and opinion, this satisfies due process

7 5. KCC will maintain a database containing the addresses for all recipients of the Short
8 Form Notice, as well as, all returned Short Form Notices, Claim Forms and Opt-Out requests.

9 6. KCC will establish a toll-free telephone number dedicated to answering telephone
10 inquiries from Class Members and processing requests for Long Form Notices and Claim Forms to be
11 sent by physical mail.

12 7. KCC will also established a website (www.kccllc.net/asurionsettlement) dedicated to this
13 settlement to provide additional information to the Class Members, including copies of the Settlement
14 Agreement, Long Form Notice and other relevant settlement documents. Visitors of the website will
15 also be able to submit claims online or download a Claim Form to be sent in via mail. The web address
16 will be set forth in the Long Form Notice, Short Form Notice and Claim Form.

17 8. KCC will setup a Qualified Settlement Fund ("QSF") for handling the payments of court
18 approved attorneys' fees and costs, service awards, claims administration fees and Class Member
19 payments.

20 9. KCC estimates the total cost of notice and claims administration will be \$436,332
21 including the distribution of settlement funds, and KCC has agreed to cap all costs of notice and claims
22 administration at a not-to-exceed amount of \$486,000.

23
24 I declare under penalty of perjury pursuant to the laws of the United States of America that the foregoing
25 is true and correct to the best of my knowledge. Executed on this 30th day of October 2015 at Novato,
26 California.


27
28 
Jonathan D. Carameros

EXHIBIT A

Settlement reached with Asurion Corp., Asurion Insurance Services, Inc., and T-Mobile USA, Inc.

You could be eligible for a
payment.

Please read this Notice.

www.kccllc.net/asurionsettlement

1-877-427-8469

Asurion Lawsuit Administration Center
P.O. Box 6198
Novato, CA 94948-6198

First-Class
Mail
US Postage
Paid
Permit #__

«Barcode»

Postal Service: Please do not mark barcode

ASC—«ClaimID» «MailRec»

«First1» «Last1»

«CO»

«Addr1» «Addr2»

«City», «ST» «Zip» «Country»

AUE

NOTICE OF CLASS ACTION SETTLEMENT WITH ASURION CORP., ASURION INSURANCE SERVICES, INC., AND T-MOBILE USA, INC.

A court authorized this notice. This is not a solicitation from a lawyer. This notice summarizes your rights and options.

The class action lawsuit, *Wineesa Cole v. Asurion Corp., et al.*, Case No. CV-06-6649-R, is pending in the U.S. District Court for the Central District of California. The lawsuit alleges that Asurion and T-Mobile ("Defendants") offered and sold cellular telephone insurance without adequately disclosing certain terms of the insurance policy. The Court did not make a decision regarding the claims made in the lawsuit. Instead, the plaintiff and Defendants have agreed to settle the lawsuit. The Class includes all persons who, while residing in the State of California, purchased cellular telephone insurance from Asurion through T-Mobile from August 1, 2003 to April 2, 2008 ("Class Period") (except all individuals who released their claims against Defendants as part of the settlement agreement in *Carlos Perez v. Asurion Corporation et al.*, Case No. 06-20734 (S.D. Fla.), who are excluded from this settlement).

THE SETTLEMENT: The Defendants have agreed to pay \$4.2 million into a Settlement Fund to end the class action lawsuit. The Settlement Fund will be used to pay Class Counsel's fees and expenses, a service award to the named plaintiff, and the Claims Administrator's fees and costs, and to make payments to Class Members. Each Class Member who submits a valid claim will receive a payment. All payments will be in the same amount, which will depend on the total amount available to make payments to Class Members, as well as the number of valid claims submitted. For more information on how payments will be calculated, go to www.kccllc.net/asurionsettlement.

GETTING A PAYMENT: You must complete and mail a Claim Form postmarked by NOTE THIS WILL BE A DIFFERENT DATE THAN OBJECTION/OPT OUT DATE **Month 00, 2016**. Claim Forms are available at www.kccllc.net/asurionsettlement or by calling 1-877-427-8469. Claim Forms may also be submitted online.

OTHER OPTIONS: If you do nothing, you will be legally bound by the settlement, you will release claims, and you will not receive a payment. If you do not want to be legally bound by the settlement, you must exclude yourself by **Month 00, 2015**. Unless you exclude yourself, you will not be able to sue Asurion or T-Mobile for the claims made in this lawsuit and released by this settlement. If you don't exclude yourself, you may object and notify the Court that you or your lawyer intends to appear at the Court's final approval hearing. Objections are due by **Month 00, 2015**. See further details on the website about this.

FINAL APPROVAL HEARING: The Court will hold a Final Approval Hearing on **Month 00, 2016** to consider whether to approve the settlement; attorneys' fees of up to \$1.9 million plus expenses; and a \$5,000 service award to the named plaintiff. If approved, these amounts, as well as the cost of administering the settlement will be deducted from the Settlement Fund before calculating Class Member payments. You or your lawyer may appear at the hearing at your own expense.

MORE INFORMATION: Visit www.kccllc.net/asurionsettlement, call toll-free 1-877-427-8469, or write to Asurion Lawsuit Administration Center, P.O. Box 6177, Novato, CA 94948-6177.

**NOTICE OF CLASS ACTION SETTLEMENT WITH ASURION CORP.,
ASURION INSURANCE SERVICES, INC., AND T-MOBILE USA, INC.**

A court authorized this notice. This is not a solicitation from a lawyer.

This notice summarizes your rights and options in this settlement.

WHAT IS THE CLASS ACTION LAWSUIT ABOUT? The class action lawsuit is called *Wineesa Cole v. Asurion Corp., et al.*, Case No. CV-06-6649-R, and is pending in the United States District Court for the Central District of California. The lawsuit alleges that Asurion and T-Mobile offered and sold cellular telephone insurance without adequately disclosing certain terms of the insurance policy. The Court overseeing the class action lawsuit did not make a decision regarding the claims made in the lawsuit. Instead, the plaintiff (Wineesa Cole) and Asurion and T-Mobile (“Defendants”) have agreed to settle the lawsuit and resolve the claims.

WHO IS INCLUDED IN THE CLASS ACTION SETTLEMENT? The Class includes all persons who, while residing in the State of California, purchased cellular telephone insurance from Asurion through T-Mobile from August 1, 2003 to April 2, 2008 (“Class Period”). All individuals who released their claims against Defendants as part of the settlement agreement in *Carlos Perez v. Asurion Corporation et al.*, Case No. 06-20734 (S.D. Fla.) are excluded from this settlement.

WHAT DOES THE SETTLEMENT PROVIDE? The Defendants have agreed to pay \$4.2 million into a Settlement Fund to end the class action lawsuit. The Settlement Fund will be used to pay Class Counsel’s fees and expenses, a service award to the named plaintiff, and the Claims Administrator’s fees and costs, and to make payments to Class Members. The portion of the Settlement Fund available to make payments to Class Members is called the Net Settlement Fund. Each Class Member who submits a valid claim will receive an equal share of the Net Settlement Fund, up to a cap amount that represents an estimated maximum average recovery that the Class Members could have recovered by proceeding to trial. The size of the payment received by each Class Member who submits a valid claim will depend on the size of the Net Settlement Fund and the number of Class Members who submit valid claims.

HOW DO YOU RECEIVE A PAYMENT FROM THIS SETTLEMENT? You must complete and mail a Claim Form so it is postmarked by [insert date], or submit one online at [www. www.kccellc.net/asurionsettlement](http://www.kccellc.net/asurionsettlement) by [insert time and date].

HOW DO YOU OBJECT TO THE SETTLEMENT? If you do not like the settlement or one or more of its terms you may object to it. The Court will consider your objection before deciding whether to grant final approval to the settlement. To object you must send a letter by first class mail with postage pre-paid to the Court and the Claims Administrator. Your objection must be postmarked on or before [insert date] and include (1) the case name, *Cole v. Asurion Action*; (2) your name, address, telephone number, and the contact information for your attorney if you have hired one to represent you in connection with your objection or in this litigation; (3) the factual and legal basis for each objection, as well as any supporting exhibits you would like the Court to consider; and (4) a statement indicating whether you or your attorney (including the attorney’s name, address and telephone number) intends to appear at the Final Approval Hearing.

The Court’s address is United States Courthouse, c/o Clerk of the Court, 312 North Spring Street, Los Angeles, California 90012-4701. The Claims Administrator’s address is Asurion Lawsuit Administration Center, P.O. Box 6177, Novato, CA 94948-6177.

HOW DO YOU EXCLUDE YOURSELF FROM THE SETTLEMENT? If you do not want to be legally bound by the settlement and you want to keep any rights you may have to sue or

continue to sue Asurion or T-Mobile as part of any other lawsuit involving the claims made in this lawsuit and resolved by this settlement, you must exclude yourself from this settlement. To exclude yourself you must mail an Exclusion Letter to the Claims Administrator at Asurion Lawsuit Administration Center, P.O. Box 6177, Novato, CA 94948-6177 or submit an Exclusion Letter online at www.kccllc.net/asurionsettlement. To be valid, if mailed, your Exclusion Letter must be signed, dated, and postmarked by [insert date], and include your name and a sentence stating that you wish to exclude yourself from the *Cole v. Asurion Action*. If filed online, your Exclusion Letter must be completed and submitted by [insert time and date]. If you exclude yourself, you cannot receive a settlement payment or object to the settlement.

WHAT HAPPENS IF YOU DON'T DO ANYTHING? If you do nothing, or if you file a claim form, or if you submit an objection, you are choosing to stay in the Class. This means you will be legally bound by all orders and judgments of the Court in this case, and you will not be able to sue or continue to sue Asurion or T-Mobile as part of any other lawsuit involving the claims made in this lawsuit and resolved by this settlement.

WHAT ARE YOU GIVING UP IN EXCHANGE FOR THE SETTLEMENT? Unless you exclude yourself, you will be legally bound by all orders and judgments of the Court in this case, and you will not be able to sue or continue to sue Asurion or T-Mobile as part of any other lawsuit involving the claims made in this lawsuit and resolved by this settlement. The Specific claims you are giving up are called "Released Claims". The Released Claims are explained in necessary and accurate legal terminology in Section 15 of the Settlement Agreement and Release. A copy of the Settlement Agreement and Release can be viewed online at the settlement website, www.kccllc.net/asurionsettlement.

WHO REPRESENTS YOU? The Court appointed The Kick Law Firm, APC to represent you as Class Counsel. You don't have to pay Class Counsel for their services. Instead, Class Counsel will ask the Court to award them \$1.9 million in fees, plus costs, as well as a \$5,000 service award to the named plaintiff. If the Court grants Class Counsel's request, the fees, expenses and award would be deducted from the Settlement Fund, before making payments to Class Members. You may hire your own lawyer to appear in Court for you, but if you do, you have to pay that lawyer.

WHEN IS THE COURT'S FINAL APPROVAL HEARING? The Court will hold a Final Approval Hearing at __:_0 _m. on ____day, Month __, 2016 at the United States Courthouse, 312 North Spring Street, Los Angeles, California 90012-4701. At this hearing, the Court will consider whether the settlement is fair, reasonable, and adequate. The Court will also consider whether to approve Class Counsel's request for an award of attorneys' fees and expenses, as well as the plaintiff's service award. If there are objections, the Court will consider them, and may also listen to people who have asked to speak at the hearing. After the hearing, the Court will decide whether to approve the settlement.

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Asurion Lawsuit Administration Center
P.O. Box ####
Providence, RI #####-####

TBD

«Barcode»

Claim #: TBD-«ClaimID» «MailRec»
«First1» «Last1»
«CO»
«Addr1» «Addr2»
«City», «ST» «Zip»
«Country»

Name/Address Changes (if any):

First Name

Last Name

Address

City

State

Zip

Home phone: (____) _____

Alternate phone: (____) _____

E-Mail Address: _____

UNIQUE IDENTIFYING CLAIM NUMBER

Winessa Cole v. Asurion Corp., et al., Case No. CV-06-6649-R

CLAIM FORM

If you purchased cellular telephone insurance from Asurion through T-Mobile, while residing in the State of California, from August 1, 2003 to April 2, 2008 ("Class Period"), you may file a claim for a payment. All payments will be in the same amount, which will depend on the total amount available to make payments, as well as the number of valid claims. For more information on how payments will be calculated, go to www.kccllc.net/asurionsettlement.

In order to receive a payment, you must complete and return this Claim Form to the Administrator postmarked no later than Month 00, 2015 or you can file a Claim Form on the settlement website no later than [DATE/TIME]. You can access the online Claim Form at www.kccllc.net/asurionsettlement.

I. Claimant Information

First Name

Middle Initial

Last Name

Street Address

City

State/Country

Zip/Postal Code

T-Mobile Cellular Telephone Phone Number(s) for the Insured Device(s)

Name of the person that appears on the contract for insurance, if not you (as it appears on the contract)

Name on Contract

II. Certification

I have read and am familiar with the contents of the Notice accompanying this Claim Form, and I certify that the information I have set forth in the foregoing Claim Form is true, correct and complete to the best of my knowledge. I certify that I purchased cellular telephone insurance from Asurion through T-Mobile, while residing in the State of California, from August 1, 2003 to April 2, 2008.

Signature of Claimant

Date