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15 **UNITED STATES DISTRICT COURT**
16 **NORTHERN DISTRICT OF CALIFORNIA**
17 **SAN FRANCISCO DIVISION**

18

19 DAVID and LISA FAIGMAN, individually
and on behalf of all others similarly situated,

20 Plaintiffs,

21 vs.

22 AT&T MOBILITY LLC, formerly known as
23 CINGULAR WIRELESS, LLC; and DOES 1
through 100, inclusive,

24 Defendants.
25

CASE NO. C06-04622 MHP

**FIRST AMENDED CLASS ACTION
COMPLAINT**

JURY TRIAL DEMAND

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1 Plaintiffs David and Lisa Faigman, individually and on behalf of the Class defined below,
2 bring this action for damages, restitution, and injunctive relief under California State law against
3 defendant AT&T Mobility LLC, formerly known as Cingular Wireless, LLC, demanding a trial by
4 jury, and complain and allege as follows:

5 **I. INTRODUCTION**

6 1. Defendant AT&T Mobility LLC, formerly known as Cingular Wireless, LLC and
7 hereinafter referred to as "Cingular," is the nation's largest mobile phone company in terms of
8 subscribers and revenues. In 2005, Cingular had a total of 54.1 million personal communication
9 service subscribers and generated over \$34.4 billion in revenues. Cingular sells wireless voice and
10 data communication services to individuals, businesses, and the government through a
11 combination of company stores and kiosks, authorized agent locations, national retail points of
12 presence, and national retail prepaid locations. Cingular also conducts sales on the Internet,
13 through its website, and through the use of direct mail and telemarketing.

14 2. Plaintiffs bring this action to challenge Cingular's misleading and unfair business
15 practices in the solicitation and sale of Cingular products and services. Specifically, plaintiffs
16 challenge Cingular's disclosures regarding its rebate programs, which are a key component of the
17 company's marketing strategy. Contrary to Cingular's marketing, its prior practice, and
18 consumers' reasonable expectations, Cingular fulfills consumer rebates using "Cingular VISA
19 Reward Cards." As set forth below, VISA Reward Cards are inferior to cash and checks, and
20 Cingular has failed to adequately disclose its use of these inferior Reward Cards to consumers.
21 Plaintiffs and the Class have suffered actual and monetary injury as a result of Cingular's
22 misleading practices, and Cingular has been unjustly enriched by these practices.

23 3. All of the claims asserted herein arise out of Cingular's misleading and unfair
24 advertisements and marketing campaign regarding its rebate programs and are a common fact
25 pattern as to each member of the Class defined below.

26 **II. JURISDICTION AND VENUE**

27 4. This Court has jurisdiction over this action pursuant to 28 U.S.C. Section 1332(d).
28 This is a proposed class action involving more than 100 class members, at least one member of the

1 putative class is a citizen of a state different from defendants, and the aggregate amount in
2 controversy exceeds \$5,000,000, exclusive of interest and costs.

3 5. Venue is proper in this judicial district pursuant to 28 U.S.C. Section 1391(a) and
4 (c) in that Cingular conducts business in, and a substantial part of the events giving rise to
5 plaintiffs' claims occurred in, this judicial district.

6 III. THE PARTIES

7 A. Plaintiffs

8 6. Plaintiffs David and Lisa Faigman are California residents. Based on misleading
9 Cingular advertisements that they saw, the Faigmans were deceived into purchasing new cell
10 phones from, and entering into new service contracts with, Cingular. Plaintiffs have sustained
11 actual and monetary damages as more fully set forth below.

12 B. Defendant AT&T Mobility LLC, formerly known as Cingular Wireless LLC

13 7. Defendant AT&T Mobility LLC is the renamed Cingular Wireless LLC, which was
14 a 60/40 joint venture between AT&T Inc. and BellSouth Corporation. In 2006, AT&T Inc.
15 acquired BellSouth Corporation's 40 percent share in Cingular Wireless LLC. Shortly thereafter,
16 AT&T Inc. renamed Cingular Wireless LLC to AT&T Mobility LLC. Although AT&T Mobility
17 LLC is reportedly in the process of re-branding the company with the AT&T name, for the time
18 being, it continues to use the Cingular name, logo, and website. Hereinafter, AT&T Mobility LLC
19 will be referred to as "Cingular."

20 8. Cingular provides wireless services to individuals, business, and government users.
21 Cingular has licenses to provide wireless services covering an aggregate of 294 million in
22 population or approximately 99% of the United States population, including all of the 100 largest
23 metropolitan areas in the United States. It is the nation's largest cellphone company in terms of
24 subscribers and revenue. In 2005, Cingular had a total of 54.1 million wireless service subscribers
25 and generated over \$34.4 billion in revenues.

26 C. Doe Defendants

27 9. Except as described herein, plaintiffs are ignorant of the true names of defendants
28 sued as Does 1 through 100, inclusive, and the nature of their wrongful conduct, and therefore

1 sues these defendants by such fictitious names. Plaintiffs will seek leave of the Court to amend
2 this complaint to allege their true names and capacities when ascertained.

3 **D. Agency / Aiding and Abetting**

4 10. At all times herein mentioned, Cingular and the Doe defendants, and each of them,
5 were an agent or joint venturer of each of the other, and in doing the acts alleged herein, were
6 acting within the course and scope of such agency. Each defendant had actual and/or constructive
7 knowledge of the acts of each of the other defendants, and ratified, approved, joined in, acquiesced
8 and/or authorized the wrongful acts of each co-defendant, and/or retained the benefits of said
9 wrongful acts.

10 11. Defendants, and each of them, aided and abetted, encouraged and rendered
11 substantial assistance to the other defendants in committing the wrongful acts alleged herein. In
12 taking action, as particularized herein, to aid and abet and substantially assist the commission of
13 these wrongful acts and other wrongdoing complained of, each of the defendants acted with an
14 awareness of its primary wrongdoing and realized that its conduct would substantially assist the
15 accomplishment of the wrongful conduct, wrongful goals, and wrongdoing.

16 **IV. FACTUAL ALLEGATIONS**

17 **A. Cingular's Use of Rebate Programs**

18 12. The wireless phone industry has seen increased competition in recent years with the
19 proliferation of wireless service providers and the portability of wireless telephone numbers.
20 Consequently, the sale of wireless phones and service is driven in large part by price, both for cell
21 phones and cell phone service. To offer phones and service plans at attractive price points,
22 Cingular uses rebate programs as a prominent component of its marketing campaign.

23 13. Cingular markets its rebates as directly reducing the cost of Cingular cell phones by
24 the dollar amount of the rebate. This marketing strategy is misleading and unfair to consumers
25 because Cingular knows that not all consumers will receive a rebate, nor will they all be able to
26 get the full value of the rebate. According to a March 4, 2006 *New York Times* article citing
27 research conducted by Vericours Inc., about 40 percent of rebate offers are never redeemed.
28 Companies that offer rebates, including Cingular, are aware of such "breakage" or "slippage" in

1 the redemption of rebates and even count on a certain number of unredeemed rebates when
2 evaluating the economics of rebate programs. Therefore, Cingular is aware that not all consumers
3 will be able to obtain the discounted prices that it advertises.

4 14. Although the use of rebates is not regulated or statutorily defined, it is widely
5 understood that a rebate is "a return of part of a payment, serving as a discount or reduction."
6 *Black's Law Dictionary* (8th Ed. 2004). Unlike discounts at the point of purchase, a rebate is
7 delivered after purchase. In order to receive a rebate, a consumer must fill out a rebate form and
8 meet certain requirements, such as providing proof of purchase within a specified time period.
9 The consumer must then wait weeks or months for the rebate form to be processed and fulfilled.

10 15. Traditionally, companies offering rebates have fulfilled them by issuing checks to
11 consumers. In the past, Cingular's practice was to fulfill rebate offers by check. In 2005,
12 however, Cingular discontinued the use of rebate checks and instead began issuing "Cingular
13 VISA Reward Cards." As described below, VISA Reward Cards have numerous limitations that
14 make them inferior to checks and cash, a fact which is not disclosed in Cingular's advertising.

15 **B. VISA Reward Cards Are Not the Same as Cash or Check**

16 16. The VISA Reward Cards used by Cingular to fulfill rebates contain numerous
17 limitations and restrictions that render them far different from, and inferior to, cash or check. In
18 fact, the VISA Reward Cards arrive by mail with two pages worth of fine-print terms and
19 conditions for its use. A copy of the terms and conditions is attached hereto as Exhibit A.
20 Significantly, Cingular never discloses these terms or conditions in its marketing. These terms
21 and conditions include, but are not limited to, the following:

22 a. VISA Reward Cards must be activated. In order to use a VISA Reward
23 Card, the customer must first activate the card through Cingular's website
24 or by phone, inputting the telephone number that corresponds with the
25 Cingular wireless phone that qualified for the "rebate." A check does not
26 have to be activated. It merely has to be deposited into a bank account or
27 cashed.

28 b. VISA Reward Cards are not accepted at all locations. Use of the VISA

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Reward Card is restricted to merchants who have established a relationship with VISA and who further agree to accept these particular VISA products. Not all merchants who accept VISA credit cards will accept VISA Reward Cards. Cash may be used anywhere, of course.

- c. VISA Reward Cards can incur service charges. Merchants can impose service charges that reduce the value of the VISA Reward Card. Cingular does not provide any offsetting increase of the value of the card in such circumstances. In contrast, use of cash does not lead to service charges.
- d. VISA Reward Cards will be declined in transactions that exceed the balance on the card. If a consumer attempts to use a VISA Reward Card towards a transaction that exceeds the value of that card (intending to pay the difference in cash or by other credit card), the VISA Reward Card will be declined. In order for a consumer to use a VISA Reward Card toward a purchase that exceeds the balance on that card, the consumer must notify the merchant of the exact balance on the card, and the merchant must process the purchase in two transactions. Cash has no such limitation.
- e. VISA Reward Cards expire. VISA Reward Cards expire 120 days from the date of issuance. If the balance is not used by the expiration date, it is forfeited. Because the expiration date begins to run from the time of issuance, rather than the time of activation, consumers may have even a smaller window of time to use the Cards if receipt of the card is delayed. Cash, of course, does not expire.
- f. VISA Reward Cards are not redeemable for cash. Unlike a debit card, VISA Reward Cards are not redeemable for cash, even when the balance on a card is a nominal amount or when a card has expired.
- g. VISA Reward Cards do not earn interest. Unlike cash, which can be deposited into an interest bearing account, VISA Reward Cards do not earn interest for consumers. On the other hand, Cingular and/or its agents who

1 issue the VISA Reward Cards, can utilize, and thus collect interest on, the
2 rebate funds up to the time the consumer makes a purchase using the
3 Reward Cards.

4 h. VISA Reward Cards are not divisible. Unlike cash, VISA Reward Cards
5 are not divisible. In other words, a consumer cannot turn one \$50 card into
6 two \$25 cards.

7 i. VISA Reward Cards are not transferable. Unlike cash, VISA Reward Cards
8 are not transferable and cannot be gifted by the recipient.

9 j. VISA Reward Cards collect private information. Unlike cash, VISA
10 Reward Cards keep track of transactional information that Cingular will
11 share with its employees, auditors, affiliates, service providers, and
12 attorneys.

13 k. VISA Reward Cards are issued in maximum increments of \$50. This
14 means that a consumer who is eligible for a \$150 rebate will receive three
15 \$50 VISA Reward Cards. This compounds the limitations and
16 inconveniences of the cards.

17 **C. Cingular's Marketing Does Not Clearly Disclose the Use of VISA Reward Cards**

18 17. As is the custom and practice of most companies, Cingular coordinates its
19 marketing efforts to send a consistent message about the desirability, character, uses, and benefits
20 of its products and services. Cingular's marketing efforts include advertising the rebate offers in
21 major newspapers, mailing rebate offers directly to consumers, and displaying rebate offers at
22 retail locations. Following the custom of other rebate promotions it has offered in the past,
23 Cingular's advertising seeks to convey the impression that once a customer mails in a completed
24 rebate form, he or she will receive the dollar value of the discount in cash or by check.

25 18. When Cingular first began using VISA Reward Cards to fulfill rebates, its
26 advertisements promoted discounted price points in large bold font and stated in smaller font, that
27 the price was after a "[x] mail-in rebate card." Plaintiffs believe that the "mail-in rebate card"
28 language appeared uniformly in Cingular's newspaper ads, direct mail ads, and in-store displays.

1 Cingular's advertisements did not explain the meaning of "mail-in rebate card" nor that rebates are
2 fulfilled in a form other than check. The advertisements did not mention VISA, VISA Reward
3 Cards, or any of the numerous restrictions and limitations that would apply to the "rebate card."
4 Attached hereto as Exhibit B is a partial copy of a full-page Cingular advertisement that was
5 printed in the *San Francisco Chronicle* on February 28, 2006. Attached hereto as Exhibit C are
6 multiple direct mail advertisements.

7 19. After the Faigmans filed this suit in June 2006, Cingular modified the language of
8 its advertisements, presumably because it recognized that the "mail-in rebate card" was too vague.
9 Cingular's advertisements now promote discounted price points and state, "after [\$x] in mail-in
10 rebate debit cards." The inclusion of the word "debit," however, does not ameliorate the
11 misleading and unfair qualities of Cingular's advertisements for several reasons.

12 20. First, Cingular continues to emphasize the purported final cost, and minimize the
13 rebate language, when it knows that a substantial number of rebates are never redeemed, or are
14 redeemed but not fully utilized.

15 21. Second, the "debit card" language in Cingular's advertisements are not noticeable
16 because they are buried in fine print. For example, Cingular's television advertisements
17 prominently highlight discounted price points then briefly flash the "mail in rebate debit card"
18 language on the bottom of the television screen in fine print. The "debit card" language appears so
19 quickly that it is not legible to the average consumer.

20 22. Third, Cingular's current advertisements still do not mention VISA, VISA Reward
21 Cards, or the terms and conditions associated with the cards.

22 23. Fourth, Cingular's characterization of the VISA Reward Card as a "debit card" is
23 not accurate. As demonstrated by the restrictive terms and conditions listed above, the VISA
24 Reward Card does not have the convenient features of a true debit card, such as the ability to
25 redeem it for cash. In fact, if a merchant attempts to process the VISA Reward Card as a debit
26 card, the card will be rejected. None of Cingular's advertisements disclose these restrictions.

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1 **D. Consumers are Locked Into a Service Contract by the Time They Learn of the**
2 **Reward Cards' Limitations**

3 24. Upon completion of a purchase transaction, Cingular will provide consumers with a
4 rebate form. Most average consumers do not review the rebate forms until they are at home and
5 ready to fill them out. In filling out the rebate forms, consumers are motivated to complete the
6 process as soon as possible in order to meet the rebate submission deadlines.

7 25. Although the rebate forms will have headings such as "Great rebates from
8 Cingular" in large, easy to read font, they provide "VISA Reward Card" disclosures in much
9 smaller font, and crowded among single-spaced fine print text. The rebate forms also disclose
10 some, but not all of, the terms and conditions associated with the VISA Reward Card. Again,
11 these statements are not noticeable to consumers because they are buried in small print. Attached
12 hereto as Exhibit D is a typical rebate form. Consequently, many average consumers do not focus
13 on, and do not appreciate the content of, that small print.

14 26. Even the VISA logo that appears on the rebate forms is not clear. First, the VISA
15 logo is smaller than the Cingular logos on the same form and therefore not noticeable. Second,
16 Cingular has a number of partnerships with credit card issuers, and a reasonable consumer could
17 easily misunderstand the VISA logo to be an advertisement for an entirely different product or
18 promotion. For example, a company called Next Estate Communications reportedly issues a
19 "Cingular Prepaid Visa Card" that is a reloadable VISA card distinct from the VISA Reward
20 Cards at issue here.

21 27. Many of the rebate forms, including the ones that the Faigmans completed, state
22 next to the VISA logo that "Two Cingular VISA Reward Cards will be issued for the \$100 rebate
23 and Three will be issued for the \$150 rebate." *See* Exhibit D. This statement is not applicable to,
24 and therefore confusing for, consumers applying for a \$30 or \$50 rebate. It is not unreasonable for
25 consumers who are not applying for a \$100 or \$150 rebate to disregard those statements.

26 28. Finally, even assuming *arguendo* that the belated disclosures in Cingular's rebate
27 forms are clear to consumers, they are insufficient to excuse the misleading quality of Cingular's
28 marketing statements. Once a consumer has completed the purchase transaction, it is not easy to

1 undo the transaction. In fact, if more than 3 days has passed since the purchase transaction, the
2 consumer cannot cancel the service contract without forfeiting the activation fee paid to Cingular.
3 Additionally, if more than 30 days has passed since the purchase transaction, the consumer cannot
4 cancel the Cingular service without incurring an early termination fee.

5 29. Once a consumer submits the rebate application and accompanying documentation,
6 the purchaser must wait up to “10 - 12 weeks after [the] rebate request has been received and
7 verified” to receive the rebate payment. *See* Exhibit D. As stated above, the VISA Reward Cards
8 arrive with two pages worth of terms and conditions. *See* Exhibit A. This is the first time that
9 Cingular discloses the numerous limitations on the use of VISA Reward Cards to consumers.
10 Because consumers will be well into their contract term, and will not be able to cancel service
11 without incurring substantial early termination fees, they have, for all practical intents and
12 purposes, no ability to undo the transaction.

13 **E. Consumers Complain About Cingular’s Misleading Rebate Program**

14 30. Numerous Cingular customers who received VISA Reward Cards instead of cash
15 or a check have written into newspapers and posted complaints on public forums. The following
16 are examples of such complaints:

17 There was never anything stated to me by Cingular about a debit card issue instead
18 of a check . . . Yikes! Is this legal?

19 June 11, 2005 post on *The San Jose Mercury News*’ website.

20 The \$100 Cingular ‘Rebate’ is not a rebate. First, you do not get a cash refund nor
21 a cash-redeemable certificate. What you get is a very temporary (120 day) Visa
22 Reward Card god [sic] for UP TO \$100 on OTHER PURCHASES. You can not
use the card to withdraw cash from any dispenser . . . You will not see your paid-
out \$100 again.

23 November 24, 2005 post on www.cnet.com titled “NOT a rebate!”

24 I've had experience with Cingular's debit card rebate plans. There's nothing simple
25 about them; they're an abomination – sometimes they work, sometimes they don't.

26 February 21, 2006 post on www.gripe2ed.com.

27 As someone noted, in many stores (at least in my area) you CANNOT use the card
28 at all if the amount is greater than the balance on the card. So when the card is

1 worth \$1.87, you have to either find something worth that much *including tax* or
2 get the store to ring it as two transactions, which they generally don't want to do. I
3 have several of these cards that are all down around a buck (one of 'em is down to
\$0.21, which I consider a win!). I've stopped trying to use them at all.

4 February 21, 2006 post on www.gripe2ed.com.

5 I got five of these Cingular cards. I tried them at 2 restaurants, 2 gas stations, and 2
6 supermarkets. They were refused at every location (and yes, processing was
attempted as both credit and debit, to no avail).

7 February 22, 2006 post on www.gripe2ed.com.

8 Now that I know more about the rebate "cards", I think the way Cingular advertised
9 "rebates" is sneaky. When I got my phones, I was told, and it was advertised on
10 large signs in the store and on their website, that rebates were given. Nowhere did
it say "cards", until after the sale was made and you got your rebate form to fill out.
11 I always read all the fine print, and it wasn't until I made my purchase and read the
fine print that I saw anything [sic] about VISA rebate cards.

12 February 27, 2006 post on the Cingular Customer Forum.

13 I've never heard of getting a rebate this way. I think Cingular went out of their
14 way to hide this fact.

15 April 3, 2006 post on the Cingular Customer Forum.

16 Unfortunately I received three \$50 rebates this way . . . in Visa card form. Let me
17 tell you, they are a [sic] more than a little HARD to spend. I could not use them on
18 three internet sites that I tried. I couldn't use them at my grocery store or local
drug store. These are BIG chain stores that I am referring to . . . I was also unaware
19 that this rebate came as a card.

20 April 8, 2006 post on the Cingular Customer Forum.

21 What isn't stated up front is that you don't receive a check, you receive a VISA
22 rebate card. It's not stated on the Cingular website, and it's not stated on the large
advertising posters in the store windows, and it's not stated on the advertising flyers
23 in the Cingular store. You don't find this out until AFTER you've made your
purchase and given the rebate form.

24 April 10, 2006 post on the Cingular Customer Forum.

25 It's a scam. Eventually the forgotten card in the wallet or at home in a drawer
26 expires. The Cingular folks say there is nothing they can do with an expired card –
the balance just disappears – when asked where it goes they replied – don't know. I
27 strongly suspect that it goes somewhere related to cingular! It's a ripoff scam of
28 very sophisticated means. They make it difficult to use your full rebate \$ and bank

1 the remaining card balances. I'd like to see the numbers related to this program.
2 My expired balance (contribution to cingular bottom line) was \$9.05.

3 August 16, 2006 post on www.gripe2ed.com.

4 I also think that it should be illegal for a vendor to offer a rebate in an advert or
5 verbally without a clear statement that the rebate is in the form of a CARD.
6 Consumers expect rebate CHECKS, and rightly so! If I rebate is a CARD, I'd
7 argue that it's not really a rebate, but something LIKE a rebate . . . just more
8 problematic!

9 July 18, 2006 post on the *The San Jose Mercury News*' website.

10 **F. The Faigmans' Experience with Cingular**

11 31. Plaintiff David Faigman has been a Cingular customer since about 2001, and
12 plaintiff Lisa Faigman has been a Cingular customer since before then. Prior to the subject
13 transaction, the Faigmans had purchased Cingular phones offering rebates and had received rebate
14 checks from Cingular.

15 32. Like most consumers, the Faigmans are price-conscious shoppers and consider
16 promotions and discounts when making consumer purchases. At all relevant times, they were
17 aware that Cingular offers promotions and discounts from seeing advertising in various media.

18 33. On October 24, 2005, plaintiff Lisa Faigman visited a Cingular retail store in San
19 Rafael, California to browse for new cell phones. She did not go into the store with any
20 commitment to purchase a new phone. While she was in there, she noticed that rebates were being
21 offered on various phone models. One phone model was "buy one, get one free" after rebate, and
22 another phone was free after rebate.

23 34. Lisa Faigman called her husband to tell him about the promotions. Based on the
24 advertised rebates, they decided to purchase three new phones and enter into a new 2-year service
25 contract with Cingular.

26 35. At no time before her purchase was finalized did Cingular disclose that the
27 advertised rebates would be fulfilled using a VISA Reward Card, and Lisa Faigman expected that
28 Cingular would fulfill the rebates using a check. She received the rebate forms with her new cell
phones and paperwork after the purchase transaction was complete.

1 41. Plaintiffs do not know the exact number of Class members because such
2 information is in the exclusive control of the defendants. However, plaintiffs believe that due to
3 the nature of the trade and commerce involved, Class members are sufficiently numerous, most
4 likely thousands of consumers, and geographically dispersed throughout the State, and that joinder
5 of all Class members is impracticable. The information as to the identity of the Class members
6 can be readily determined from records maintained by the defendants, such as rebate forms, sales
7 records, and mailing records, and through public notification.

8 42. Plaintiffs' claims are typical of, and not antagonistic to, the claims of the other
9 Class members because plaintiffs were injured by defendants' practices and by asserting their
10 claims, will also advance the claims of all members of the Class who were damaged by the same
11 wrongful conduct of defendants and their co-conspirators as alleged herein, and the relief sought is
12 common to the Class.

13 43. The common legal and factual questions which do not vary from Class member to
14 Class member, and which may be determined without reference to individual circumstances of any
15 Class member include, but are not limited to, the following:

- 16 a. What statements were made by Cingular in its marketing campaign;
- 17 b. Whether Cingular's advertisements and rebate programs are likely to
18 deceive;
- 19 c. Whether it was reasonable for plaintiffs and the Class members to expect
20 that they would receive rebates in the form of cash or check;
- 21 d. Whether Cingular was unjustly enriched by the challenged practices;
- 22 e. Whether Cingular's practices violate the California Consumer Legal
23 Remedies Act;
- 24 f. Whether Cingular's practices violate the California False Advertising Law;
- 25 g. Whether Cingular's practices violate the California Unfair Competition
26 Law;
- 27 h. Whether plaintiffs and the Class members have sustained damages, and the
28 proper measure of such damages; and

1 i. Whether plaintiffs and the Class members are entitled to the injunctive and
2 equitable relief requested herein.

3 44. These common questions and others predominate over questions, if any, that affect
4 only individual members of the Class.

5 45. The claims of the representative plaintiffs are typical of the claims of the Class.
6 There are no material conflicts with any other member of the Class that would make class
7 certification inappropriate. Plaintiffs and their counsel will fairly and adequately represent the
8 interests of the Class. Plaintiffs have retained attorneys experienced in the prosecution of class
9 actions, including complex cases and consumer actions, and plaintiffs intend to prosecute this
10 action vigorously.

11 46. A class action is superior to other available methods for the fair and efficient
12 adjudication of this controversy because individual litigation of the claims of all Class members is
13 impracticable. Even if every Class member could afford individual litigation, the court system
14 could not. It would be unduly burdensome on the courts if individual litigation of numerous cases
15 would proceed. By contrast, the conduct of this action as a class action, with respect to some or
16 all of the issues presented in this Complaint, presents fewer management difficulties, conserves
17 the resources of the parties and of the court system, and protects the rights of each Class member.

18 47. Prosecution of separate actions by individual Class members would create the risk
19 of inconsistent or varying adjudications, establishing incompatible standards of conduct for the
20 defendant, and would magnify the delay and expense to all parties and to the court system
21 resulting from multiple trials of the same complex factual issues.

22 48. Injunctive relief is appropriate as to the Class as a whole because defendant has
23 acted or refused to act on grounds generally applicable to the Class.

24 49. Whatever difficulties may exist in the management of the class action will be
25 greatly outweighed by the benefits of the class action procedure, including, but not limited to,
26 providing Class members with a method for the redress of claims that may not otherwise warrant
27 individual litigation.

28 ///

VI. CAUSES OF ACTION

FIRST CAUSE OF ACTION

(Violations of the California Consumers Legal Remedies Act)

50. Plaintiffs incorporate and reallege, as though fully set forth herein, each of the paragraphs above.

51. The Consumers Legal Remedies Act (“CLRA”) at Civil Code Section 1750 *et seq.* was designed and enacted to protect consumers from unfair and deceptive business practices.

52. The CLRA applies to defendants’ actions and conduct described herein because it extends to the sale of goods or services for personal, family or household use.

53. At all relevant times, plaintiffs and members of the Class were “consumers” as that term is defined in Civil Code Section 1761(d).

54. The transactions from which this action arises include transactions involving the sale or lease of goods or services for personal, family or household purposes within the meaning of Civil Code Section 1761.

55. Defendants’ practices in connection with the marketing and sale of Cingular services and products violate Civil Code Section 1770(a)(14) in that defendants knowingly misrepresented the legal rights, obligations, or remedies involved in the purchase and sale of Cingular service and products.

56. Defendants’ violations of Civil Code Section 1770 present a continuing threat to members of the public in that defendant is continuing to engage in the practices alleged herein and will not cease until an injunction is issued by this Court.]

57. By letter dated May 1, 2006, plaintiffs David and Lisa Faigman provided Cingular with notice and an opportunity to cure its violations, and defendant has failed to do so. Accordingly, plaintiffs seek actual and statutory damages.

58. Plaintiffs are entitled to an award of attorneys’ fees and costs pursuant to Civil Code Section 1780(d).

WHEREFORE, plaintiffs and the Class pray for relief as set forth below.

///

SECOND CAUSE OF ACTION

(Violations of the California False Advertising Law)

59. Plaintiffs incorporate and reallege, as though fully set forth herein, each of the paragraphs above.

60. Defendants' use of various forms of advertising media to advertise, call attention to or give publicity to the sale of their goods and services, and other practices, as set forth above, which are not as advertised or as otherwise represented, constitutes unfair competition, unfair, deceptive, untrue or misleading advertising, under the California False Advertising Law at Business & Professions Code Section 17500 *et seq.* These advertisements and practices have deceived, and are likely to deceive, the consuming public, in violation of those sections.

61. Defendants' business acts and practices, as alleged herein, have caused actual injury to plaintiffs and members of the Class.

62. Plaintiffs and the Class are entitled to injunctive relief, enjoining defendants to cease and desist from engaging in the practices described herein.

WHEREFORE, plaintiffs and the Class pray for relief as set forth below.

THIRD CAUSE OF ACTION

(Violations of the California Unfair Competition Law)

63. Plaintiffs incorporate and reallege, as though fully set forth herein, each of the paragraphs above.

64. Defendants have engaged in unfair competition within the meaning of the California Unfair Competition Law at Business & Professions Code Section 17200 *et seq.* because defendants' conduct is misleading, unfair, and illegal as herein alleged.

65. Defendants' wrongful business acts constituted, and constitute, a continuing course of conduct of unfair competition because defendants are marketing and selling their phones and services in a manner that is likely to deceive the public, and plaintiffs suffered actual harm as a result.

66. Defendants' business practices are unlawful because the conduct constitutes false marketing and advertising, as well as the other causes of action herein alleged.

- 1 4. Restitution and disgorgement according to proof;
- 2 5. Injunctive relief against defendants, and each of them, to prevent future wrongful
- 3 conduct;
- 4 6. Prejudgment interest at the maximum legal rate;
- 5 7. Costs of the proceedings herein;
- 6 8. Reasonable attorneys' fees; and
- 7 9. All such other and further relief as the Court deems just.
- 8

9 Dated: April 16, 2007

Respectfully submitted,

10 By: /s/ Bruce L. Simon
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DEMAND FOR JURY TRIAL

Plaintiffs on behalf of themselves and all others similarly situated hereby request a jury trial on all claims so triable.

Dated: April 16, 2007

Respectfully submitted,

By: /s/ Bruce L. Simon
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