

The Honorable James L. Robart



09-CV-01211-BR

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

SANDRA L. PALMER,  
Plaintiff,

v.

SPRINT SOLUTIONS, INC.  
Defendant.

CIVIL ACTION No. 09-cv-01211 JLR

REVISED PRELIMINARY APPROVAL  
AND SCHEDULING ORDER

THIS MATTER came before the Court for consideration of the Joint Motion for Preliminary Approval of Proposed Class Action Settlement ("Joint Motion") made by plaintiff Sandra Palmer ("Plaintiff") and defendant Sprint Solutions, Inc. ("Defendant" or "Sprint") (together, the "Parties"). The Court, having considered the Joint Motion, the declarations in support of the Joint Motion, the Settlement Agreement with its exhibits, and all other matters properly before the Court, hereby orders as follows:

**I. PRELIMINARY APPROVAL OF SETTLEMENT AGREEMENT**

1. The Court, for purposes of this Order, adopts the definitions set forth in the Settlement Agreement ("Agreement") attached as Exhibit A to the motion. All capitalized terms in this Order shall have the same meaning as in the Agreement.

2. The Court finds that the Agreement of the Parties was the result of serious, informed, non-collusive, and arms-length negotiations between competent counsel; that it falls within the range of reasonableness and possible approval; and that it treats all Class Members

1 fairly, and hereby grants preliminary approval of the Settlement Agreement, subject to final  
2 approval to be considered at the Final Settlement Hearing as set forth below. Accordingly, the  
3 Court also finds that notice of the proposed settlement, as set out in Section III below and in  
4 Sections III.D and IV.C of the Joint Motion should be disseminated to the Class.

5 3. Except as otherwise agreed to by the Parties, all proceedings in this action shall be  
6 stayed pending the occurrence of the Effective Date or termination of the Settlement Agreement  
7 under Section XI of the Agreement, except as to proceedings relating to the Settlement  
8 Agreement (including Plaintiffs' Counsel's request for attorneys' fees and costs).

9 **II. PROVISIONAL CERTIFICATION OF SETTLEMENT CLASSES**

10 4. Pursuant to the Settlement Agreement and for purposes of this settlement only,  
11 the Court provisionally certifies the following Settlement Classes pursuant to Fed. R. Civ. P.  
12 23(a) and (b)(3):

- 13 a. Individual, non-government, and non-business Sprint customers from  
14 July 23, 2005 to the date the Court grants preliminary approval of this  
15 settlement who, while Sprint customers, resided in Washington State  
16 and received from Sprint directly or from its agents one or more  
17 commercial telephone solicitations that used an automatic dialing and  
18 announcing device. This subclass does not include Sprint employees.
- 19 b. Individual, non-government, and non-business Sprint customers from  
20 July 23, 2005 to the date the Court grants preliminary approval of this  
21 settlement who, while Sprint customers, resided in Washington State  
22 and received from Sprint directly or from its agents one or more  
23 commercial telephone solicitations less than one year after advising  
24 Sprint or its agent that he or she did not wish to be called again by  
25 Sprint. This subclass does not include Sprint employees.
- 26 c. Individual, non-government, and non-business Sprint customers from  
July 23, 2005 to the date the Court grants preliminary approval of this  
settlement who, while Sprint customers, resided in the United States and  
received from Sprint directly or from its agents one or more commercial  
telephone solicitations more than 30 days after making a Sprint-specific  
internal Do Not Call request by advising Sprint or its agent that he or  
she did not wish to be called again by Sprint. This subclass does not  
include Sprint employees.

5. Notwithstanding this certification, the Defendants and its Related Parties, Class  
Members who timely and properly request exclusion, and the Judge to whom this case is  
assigned and any immediate family members there of shall be excluded.

1           6.     This provisional certification is effective and binding only with respect to  
2 proceedings related to or encompassed by the Settlement Agreement. If the Settlement  
3 Agreement terminates for any reason, this provisional certification shall be vacated and the  
4 Action shall revert to the status with respect to class certification that existed before execution of  
5 the Settlement Agreement. In such event, Defendant's stipulation to certification of this class in  
6 conjunction with the Settlement Agreement and Joint Motion shall not be construed as or raise  
7 any presumption or inference of a concession or admission as to the propriety of certification of  
8 this class or any other.

9           7.     For purposes of the settlement of this action (and only for such purposes and  
10 without an adjudication on the merits), the Court preliminary makes the following findings under  
11 the Federal Rules of Civil Procedure, the United States Constitution and the Rules of the Court,  
12 finding that the elements for FRCP 23(a) and well as 23(b)(3) are satisfied.

13           (a)    Each Class consists of up to thousands of Class Members. One class includes  
14 persons throughout the United States. It would be impracticable to join thousands of individuals  
15 from all over Washington State and the United States

16           (b)    In each Class, there are several questions of fact and law common to Class  
17 Members. For the subclass described in 4(a) above: (1) whether the message in question was a  
18 commercial solicitation, (2) whether the solicitations violated Washington law, and (3) whether  
19 applicable Washington law is preempted by the federal TCPA. For the subclass described in  
20 4(b) above, involving claims by Washington State residents under the Washington Telephone  
21 Solicitation Act: (1) whether an individual had requested that calls not be made, (2) whether  
22 further calls were made to the individual, (3) how many calls were made in the 12-month period  
23 following a request not to be called, and (4) whether the calls made were for purposes of  
24 solicitation. For the subclass described in 4(c) above: (1) whether and how many calls were  
25 made to the class member after asking to be on Sprint's internal Do Not Call list, (2) whether the  
26 class member had in fact requested that Sprint not call them for telemarketing purposes, and  
(3) whether the calls were made more than 30 days after the individual made the request.

1 All of these questions of law and fact are common to members of the classes and Fed. R  
2 Civ. Pro 23(a)(2)'s commonality requirement is fully satisfied

3 (c) In each Class, the claims of the named Plaintiff are typical of the Class. The pre-  
4 recorded message she claims she received was identical to a message received by other members  
5 of the subclass. Also, her claims that she asked Sprint or its agent to not call her again and  
6 within one year of that request received further calls, including some she received more than 30  
7 days after she requested that she not be called again, are typical of the Class.

8 (d) Plaintiff and her counsel will fairly and adequately protect the interests of the  
9 classes. Plaintiff is aware of the issues and facts that are the basis of the class claims, has  
10 cooperated in providing discovery responses as requested by Sprint, was deposed by Sprint, and  
11 participated in the mediation. Plaintiff's counsel have diligently pursued her claims and are  
12 experienced attorneys in class action litigation, particularly in the area of claimed violations of  
13 the Telephone Consumer Protection Act and its Washington State counterparts.

14 (e) In each Class, the resolution of this Action in the manner proposed by the  
15 Agreement is superior to other available methods for a fair and efficient adjudication of the  
16 action and common problems predominate over individual issues. Class Members do not have  
17 interests in individually controlling the prosecution of separate actions, there is no other  
18 litigation pending concerning the controversy, it is desirable to concentrate the litigation of the  
19 claims in this forum, and management of this class action will be both efficient and effective.

20 8. In making these findings, the Court has considered: (a) the interests of the Class  
21 Members in individually controlling the prosecution of the defense or defense of separate  
22 actions; (b) the impracticability or inefficiency of prosecuting or defending separate actions;  
23 (c) the extent and nature of any litigation concerning these claims already commenced; and  
24 (d) the desirability of concentrating the litigation of the claims in a particular forum.

25 **III. APPROVING CLASS NOTICE**

26 9. The Court approves the form of the Notice of Class Action and Fairness Hearing,  
substantially in the forms of Exhibits 4 ("Notice") and 5 ("Long Form Notice") to the Settlement

1 Agreement. The Court also approves the means of notice described in Section D.2 of the  
2 motion. The parties shall provide this notice to the Settlement Classes so that Notice is  
3 completed by no more than 70 days after the date of this order.

4 10. The Court finds that these methods of giving notice and the forms of said notices  
5 will constitute individual notice to Class Members who are identifiable using reasonable efforts  
6 and is the best notice practicable under the circumstances to members of the Class Members who  
7 are not individually identifiable using reasonable efforts. The Court also finds that this notice  
8 plan will fully comply with Fed. R. Civ. Pro. 23 and due process requirements of the Washington  
9 State Constitution and United States Constitution.

10 11. The universe within which Class Members can be found consists of all current  
11 and former Sprint customers since July 23, 2005. With limited exceptions, individual Class  
12 Members themselves cannot be identified. The Parties will therefore give notice to the Class  
13 Members by a combination of individual notice and publication.

14 11.1 Sprint will send individual notice to all current Sprint accounts as an insert  
15 in the monthly billing statement or as an electronic document as part of the monthly on-  
16 line statement. The Parties also will send notice by email to approximately 5.9 million  
17 former Sprint accounts. Finally, the Parties will individually notify the seven potential  
18 Class Members who are former customers and who Sprint has identified as a result of its  
19 customer relations activities, as well as the Class Members identified by Sprint's vendor,  
20 Stream.

21 11.2 The Parties will publish notice under a comprehensive plan designed by  
22 the Garden City Group as detailed in the Declaration of Jeanne Finegan. This publication  
23 plan in combination with the direct mail and email efforts is designed to reach 77% of the  
24 potential universe within which Class Members may be found in this case.

25 11.3 The proposed content of the mailed and published notice is attached to the  
26 Settlement Agreement as Exhibit 4. The Notice will refer potential claimants to a  
website where they can review a more detailed notice (attached as Exhibit 5). The

1 dedicated settlement website will summarize the settlement in plain language and identify  
2 the deadlines for opting out or objecting. The website will post the Long Form Notice,  
3 which explains the settlement, the nature of the release involved, identifies Class Counsel  
4 and the Class Representative, the fees sought, the payments that will be made to Class  
5 Members, and the deadlines and procedures for opting out and objecting. A dedicated  
6 toll-free number will also be available for Class Members who want additional  
7 information or who cannot or prefer not to access the website where they can request  
8 more information, the Long Form Notice, and a claim form.

9  
10 **IV. PAYMENT OF CLAIMS**

11 12. As set forth in the Settlement Agreement, in the event Class Members timely file  
12 a valid claim no later than 30 days after October 21, 2011, the date scheduled for the *per*  
13 Final Settlement Hearing, those with claims described in subclasses (a) and (c) above will  
14 receive up to \$2000 and may receive less than \$500 per incident; those with claims described in  
15 subclass (b) will receive up to \$400 and may receive less than \$100 per incident.

16 **V. REQUESTS FOR EXCLUSION**

17 13. Class Members may opt-out from the Settlement by sending written notice by  
18 U.S. mail in accordance with the Agreement of their intent to be excluded to the Claims  
19 Administrator no later than September 21, 2011, which is 30 days before the Final Settlement *per*  
20 Hearing is scheduled. The date of a request for exclusion from the settlement shall be the post-  
21 marked date of the request.

22 14. All persons who submit valid requests for exclusion shall have no rights under the  
23 Settlement Agreement. All Class Members who do not request exclusion shall be bound by this  
24 Court's orders, including but not limited to the Judgment and Order of Final Approval.

25 **VI. FINAL SETTLEMENT HEARING DATE AND RIGHT TO OBJECT**

26 15. A Final Settlement Hearing will be held on October 21, 2011, at 10:00 a.m., *per*  
at the Federal Courthouse for the Western District of Washington, 700 Stewart Street, Seattle

1 WA 98101, at which time the Court will determine, among other matters, whether the  
2 Settlement Agreement is fair, reasonable, and adequate. The Court may adjourn or continue the  
3 Final Settlement Hearing without further notice to the Class.

4 16. Any member of the Classes who have not requested exclusion and who opposes  
5 approval of the Settlement Agreement, including the requested attorney fees or Class  
6 Representative fee, has a right to appear at the Final Settlement Hearing to show why the  
7 Settlement Agreement should not be approved. The motion for approval of attorney fees and the  
8 Class Representative fee shall be filed with the Court and posted to the website no later than  
9 August 22, 2011, or 70 days after the date of Preliminary Approval and Scheduling *JLR*  
10 Order. Any Class Member who has not requested exclusion and who wishes to object to the  
11 Settlement Agreement must file with the Court and serve upon Plaintiff's counsel, who will  
12 provide copies thereof to Defendant's counsel, a written notice of objection no later than  
13 September 21, 2011, which is 30 days before the Final Settlement Hearing. The notice of *JLR*  
14 objection must contain the information identified in the Settlement Agreement. Only Class  
15 Members who have filed and served timely complete notices of objection will be entitled to be  
16 heard at the Final Settlement Hearing, unless the Court orders otherwise.

17 17. Any attorneys hired by individual Class Members for purposes of objecting to the  
18 Settlement shall file with the Clerk of the Court and serve on Class Counsel and Defendants'  
19 counsel a notice of appearance not later than 21 days before the Final Settlement Hearing.

20 18. The Parties shall file any responses to objections no later than six (6) days before  
21 the Final Settlement Hearing.

22 19. Any objector requesting access to the Parties' Confidential Information, as  
23 governed by the Confidentiality Agreement in this matter shall agree to be bound by the  
24 Confidentiality Agreement. Any Confidential Information identified and produced in this matter  
25 shall remain protected Confidential Information under the applicable agreement.  
26

1 **VII. APPOINTMENT OF COUNSEL AND CLASS REPRESENTATIVE**

2 20. The Court, upon consideration of: (i) the work counsel has done in identified and  
3 investigating potential claims in the action; (ii) counsel's experience in handling class actions,  
4 other complex litigation, and the claims of the type asserted in the action; (iii) counsel's  
5 knowledge of the applicable law; (iv) the resources counsel will commit to representing the  
6 class; (v) and other matters pertinent to counsel's ability to fairly and adequately represent the  
7 interest of the class, appoints the law firm of Williamson and Williams as Class Counsel to  
8 represent the Settlement Class. The Court also appoints Sandra Palmer as Class Representative.

9 **VIII. OTHER PROVISIONS**

10 21. Plaintiff and Defendant have agreed to settle the Action under the terms and  
11 conditions in the Agreement. It is understood and acknowledged that the Defendants have  
12 denied and still deny any liability, wrongdoing, and damages with respect to the matters alleged  
13 in the Action or settled in the Agreement. The Agreement is entered into as a compromise of  
14 disputed claims for the purposes of avoiding the uncertainty, costs, and delays of litigation. The  
15 settlement and Agreement is not and shall not be construed as an admission of liability,  
16 wrongdoing, or damages by Defendant or as evidence of the validity of any claims. Neither this  
17 Order, nor the Settlement Agreement, nor any of the terms, attachments, exhibits, or provisions  
18 thereto, nor any of the negotiations or proceedings connected with them, shall be referred to,  
19 offered as evidence, or received in evidence in any pending or future, civil, criminal, or  
20 administrative action or proceeding, except in a proceeding to enforce the Settlement Agreement.

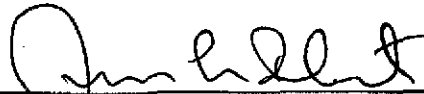
21 22. Upon motion of the parties, the Court may, for good cause, extend any of the  
22 deadlines set forth in the Order without further notice to the Settlement Class.

23 23. Not later than ten (10) business days before the Final Settlement Hearing, the  
24 Parties shall submit memoranda in support of the Court granting final approval and Class  
25 Counsel a <sup>memorandum</sup> ~~motion~~ under Fed. R. Civ. P. 54(d)(2) in support of their <sup>motion</sup> ~~request~~ for attorneys' fees  
26 and costs, <sup>previously filed pursuant to paragraph 16 above.</sup>

*JLR*

1 24. The calculation of any periods of time in this Order shall be made as provided  
2 under Fed. R. Civ. P. 6(a).

3 SO ORDERED this 13<sup>th</sup> day of June, 2011.

4   
5 THE HONORABLE JAMES L. ROBERT  
6 UNITED STATES DISTRICT JUDGE

7 Presented by:

8 WILLIAMSON & WILLIAMS

9 /s/ Rob Williamson

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REVISED PRELIMINARY APPROVAL

AND SCHEDULING ORDER -- 9

(No. 09-cv-01211 JLR)

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