

FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

HEATHER STERN; BROOKE
RANDOLPH; JOHN GIRARD; MARTIN
SCHNALL; NATHAN RIENSCHKE; KELLY
LEMONS, on behalf of themselves
and all others similarly situated,
Plaintiffs-Appellees,

v.

MARC GAMBELLO; GENE HOPKINS,
Objectors-Appellants,

NEW CINGULAR WIRELESS SERVICES,
INC., a Delaware corporation, FKA
AT&T Wireless Services, Inc.;
AT&T MOBILITY CORPORATION, a
Delaware corporation, FKA
Cingular Wireless Corporation;
AT&T MOBILITY LLC, a Delaware
limited liability company, FKA
Cingular Wireless LLC,
Defendants-Appellees.

No. 10-56929
D.C. No.
8:09-cv-01112-
CAS-AGR
Central District of
California,
Santa Ana

HEATHER STERN, on behalf of
herself and all others similarly
situated,

Plaintiff-Appellee,

NEW CINGULAR WIRELESS SERVICES,
INC., a Delaware corporation, FKA
AT&T Wireless Services, Inc.;
AT&T MOBILITY CORPORATION, a
Delaware corporation, FKA
Cingular Wireless Corporation;
AT&T MOBILITY LLC, a Delaware
limited liability company, FKA
Cingular Wireless LLC,

Defendants-Appellees,

v.

KARIN LYNCH,

Objector-Appellant,

MARC GAMBELLO; GENE HOPKINS,
Objectors.

No. 10-57062
D.C. No.
8:09-cv-01112-
CAS-AGR
Central District of
California,
Santa Ana
ORDER

Filed May 4, 2012

ORDER

BERZON, Circuit Judge:

After considerable pre-argument preparation, I realized this week that my husband and I appear to be members of the plaintiff class in this case, as we have had AT&T cellular service for some time. I therefore considered whether to recuse from this case. Having researched the question, I have deter-

mined that the appropriate course is for me and my husband to forego any financial interest in the settlement before the court (that is, the seven dollars that members of the class could obtain by filing a claim) and in any future settlement or adjudication resulting in any payment to members of the class. I am now announcing that we will do so: Neither I nor my husband will accept any payments due us as members of the class.

I have considered whether I should nonetheless recuse from this case because of possible class membership. The analysis conducted by Judges Walker and Winter in *In re Literary Works in Electronic Databases Copyright Litigation*, 509 F.3d 136 (2d Cir. 2007), in a very similar situation, is pertinent and, to me, persuasive. I have decided to adopt their analysis as my own, and so will not recuse. As they concluded, I “believe [my] decision not to recuse is authorized by [28 U.S.C.] § 455(f), strikes the appropriate balance between securing the interests of impartiality and its appearance and reducing the practical costs that unnecessary recusal entails, and does not diminish public respect for the judiciary.” *Id.* at 144.