

**IN THE SUPERIOR COURT OF FULTON COUNTY  
STATE OF GEORGIA**

DEBORAH EAVES, WILLIAM O'HARA, )  
and DAVID TEGART, on behalf of )  
themselves and all others similarly situated, )

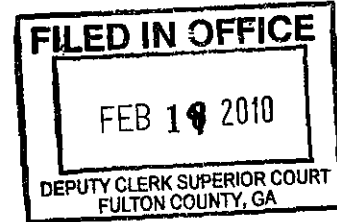
Plaintiffs, )

v. )

EARTHLINK, INC., )

Defendant. )

Civil Action No. 2005-CV-97274  
(Business Division 1 – AB)



**[PROPOSED] ORDER GRANTING PRELIMINARY APPROVAL  
OF CLASS ACTION SETTLEMENT AND APPOINTING CLASS COUNSEL**

Plaintiffs having filed a motion for an order preliminarily approving the Settlement Agreement entered into between Plaintiffs and Defendant EarthLink, Inc. ("EarthLink") and attached to Plaintiffs' Motion as Exhibit 1, and for an order appointing Class Counsel; the said motion having come on for hearing before the above-entitled Court; the Court having reviewed and considered all documents, evidence and arguments of counsel presented in support of said motion; the Court being fully advised of the premises and good cause appearing therefore, the Court enters its Order and, subject to final determination by the Court as to the fairness, reasonableness and adequacy of the settlement, finds and orders as follows:

1. The Court appoints as Lead Class Counsel: Bruce V. Spiva and Kathleen R. Hartnett of Spiva & Hartnett LLP. The Court appoints as additional Class Counsel: David J. Worley of Page Perry LLC; Roy Barnes of The Barnes Law Group LLC; Steven N. Berk of Berk Law, LLC; and Edward A. Wallace of Wexler Wallace LLP.

2. Pursuant to O.C.G.A. § 9-11-23(e), the Court hereby preliminarily approves the parties' Settlement Agreement, attached as Exhibit 1 to Plaintiffs' Motion for Preliminary Approval, and the terms of the settlement set forth therein, as fair, reasonable, and adequate.

3. Pursuant to O.C.G.A. § 9-11-23(e), the Court hereby approves the manner and content of the notice specified in the Settlement Agreement, including the Email Notice, Long Form Notice, Postcard Notice, and Publication Notice (Exhibits B1, B2, B3 and B4 thereto) (together, the "Class Notice"). The Court finds that the Class Notice will provide the best practicable notice to members of the Class, as defined in Paragraph 2.5 of the Agreement. Accordingly, EarthLink shall provide notice of the proposed settlement by: (1) providing a Long Form Notice in substantially the form of Exhibit B2 to the Settlement Agreement via posting on the website at [www.earthlinkearlyterminationfee.com](http://www.earthlinkearlyterminationfee.com), to which the notices refer; (2) sending an Email Notice in substantially the form of Exhibit B1 to the Settlement Agreement via electronic mail to all Class Members to whom EarthLink has an email address; (3) sending a Postcard Notice in substantially the form of Exhibit B3 to the Settlement Agreement to the last known physical address of those Class Members for whom EarthLink does not have email addresses or who do not receive the email notice sent to their last known email address; and (4) providing for Publication Notice in substantially the form of Exhibit B4 to the Settlement Agreement. For all Class Members, the notice shall be provided according to the procedures and in the manner specified in Part V of the Settlement Agreement, and the costs and expenses of such notice shall be paid by EarthLink. The Court authorizes the parties to make non-substantive revisions to the Class Notice as they may jointly deem necessary or appropriate, without the necessity of further Court action or approval.

4. A final approval hearing shall be held by this Court to consider and finally determine:

a. Whether the Settlement Agreement should be finally approved as fair, reasonable, and adequate;

b. Whether attorneys' fees, costs and expenses should be awarded to Class Counsel, and incentive awards made as provided in Paragraph 6.1 of the Settlement Agreement; and

c. The merits of any objections to the Settlement Agreement and the settlement set forth therein, or any of its terms.

The final approval hearing described in this paragraph may be postponed, adjourned, or continued by order of the Court without further notice to the Class.

5. Any member of the Class who does not request exclusion, and who objects to approval of the proposed settlement in compliance with the requirements of the Settlement Agreement, may appear at the final approval hearing in person or through counsel to show cause why the proposed settlement should not be approved as fair, reasonable, and adequate. Any member of the Class who does not request exclusion, and who seeks to intervene in the Action in compliance with the requirements of the Settlement Agreement, may file and serve a motion to intervene in accordance with applicable law.

6. However, no person (other than representatives of the named parties) may be heard at the final approval hearing, or file papers or briefs, unless on or before the date set forth in the Class Notice, such person files with the Clerk of the Court and serves on Plaintiff's Counsel and EarthLink's Counsel, consistent with Paragraph 7.5 of the Settlement Agreement, a timely written objection and notice of intent to appear, in accordance with the procedures

specified in the Class Notice. Any member of the Class who does not make his, her or its objection to the settlement or request for intervention in the manner provided herein and in the Settlement Agreement and in compliance with applicable law, shall be deemed to have waived such objection or right to intervene for purposes of appeal, collateral attack or otherwise.

7. The publication and dissemination of the Class Notice, as directed by this Order, constitutes the best notice practicable under the circumstances and sufficient notice to all members of the Class. The contents of the Class Notice and the manner of its dissemination satisfy the requirements of the Georgia Civil Practice Act, other Georgia law, and state and federal due process.

8. Any member of the Class who desires to be excluded from the settlement must mail, by the date set forth in the Class Notice, a written request for exclusion to the addresses set forth in the Class Notice. All persons who properly submit requests for exclusion shall not be members of the Class and shall have no rights with respect to the settlement.

9. If the Settlement Agreement is finally approved, the Court shall enter a Final Approval Order and Judgment approving the Agreement, within the meaning of and for purposes of Paragraph 7.4 of the Settlement Agreement. Said Final Approval Order and Judgment shall be fully binding with respect to all members of the Class who did not request exclusion by the date set forth in the Class Notice, in accordance with the terms of the Class Notice and the Settlement Agreement.

10. All discovery and other pretrial proceedings in this action are stayed and suspended until further order of this Court, except as otherwise agreed to by the parties or as may be necessary to implement the Settlement Agreement or this Order.

11. In the event that the proposed settlement as provided in the Settlement Agreement is not finally approved by the Court, or entry of a Final Approval Order and Judgment as provided in the Settlement Agreement does not occur for any reason, then the Settlement Agreement, all drafts, negotiations, discussions, and documentation relating thereto, and all orders entered by the Court in connection therewith shall become null and void. In such event, the Settlement Agreement and all negotiations and proceedings relating thereto shall be withdrawn without prejudice to the rights of any and all parties thereto, who shall be restored to their respective positions as of the date of the execution of the Settlement Agreement.

12. The dates of performance of this Order are as follows:

a. The final approval hearing shall be held 90 days from the date of this Order, *i.e.*, May 21, 2010, at 10 a.m./p.m.

b. The Class Notice shall be published and disseminated in accordance with the provisions of Part V of the Agreement. The parties shall use their best efforts to cause notice to be disseminated and published as follows: email notice within 15 days after the date of this Order; postcard notice for class members not reached by email notice within 10 days after completing email notice; and publication notice within 15 days after the date of this Order.

c. Requests for exclusion must be sent by 30 days prior to the final approval hearing, *i.e.*, April 21, 2010.

d. Objections to the settlement and notices of intention to appear at the final approval hearing shall be deemed timely only if filed with the Court and served on counsel for the parties by 30 days prior to the final approval hearing, *i.e.*, April 21, 2010.

e. Counsel for EarthLink shall prepare and file with the Court a joint list of class members who have filed timely requests for exclusion by 10 days prior to the final approval hearing, i.e., May 16, 2010.

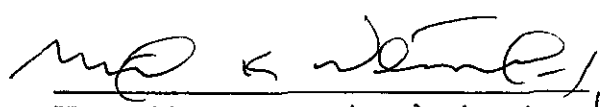
f. Plaintiffs' Counsel shall file and serve papers requesting attorneys' fees, costs and expenses by 20 days prior to the final approval hearing, i.e., ~~May~~ April 30, 2010.

g. The Parties shall file papers, if any, in support of final approval of the settlement and responding to any objections or motions to intervene by 20 days prior to the final approval hearing, i.e., April 30, 2010.

h. Within 30 days of the date of this Order, i.e., March 19, 2010, EarthLink shall certify to the Court that it has complied with the notice requirements set forth in the Agreement and this Order.

IT IS SO ORDERED.

DATED: February 19, 2010

  
Honorable Melvin K. Westmark  
Judge of the Superior Court of Fulton County