

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
San Francisco Division

IAN VIANU, ELIZABETH BLUM, and
DOMINIC GUTIERREZ, on behalf of
themselves and all others similarly situated,

Plaintiffs,

v.

AT&T MOBILITY LLC,
Defendant.

Case No. 19-cv-03602-LB

**ORDER GRANTING MOTION FOR
PRELIMINARY APPROVAL OF
CLASS-ACTION SETTLEMENT**

Re: ECF No. 145

INTRODUCTION

This is a class action against AT&T Mobility LLC. The plaintiffs — current and former wireless-service customers of AT&T — allege that AT&T engages in a “bait-and-switch scheme” with customers by which it advertises particular flat monthly rates for wireless-service plans but then (after customers sign up) “covertly” adds a monthly administrative fee.¹ The plaintiffs’ claims are for violations of California’s Unfair Competition Law (UCL), California’s False Advertising Law (FAL), and California’s Consumer Legal Remedies Act (CLRA), plus permanent public injunctive relief and breach of the implied covenant of good faith and fair dealing.² The parties

¹ First Am. Compl. (FAC) – ECF No. 118 at 2 (¶ 1). Citations refer to material in the Electronic Case File (ECF); pinpoint citations are to the ECF-generated page numbers at the top of documents.

² *Id.* at 27–36 (¶¶ 113–73).

1 settled their case and the plaintiffs moved for preliminary approval of the proposed settlement.³
 2 The court grants the unopposed motion.

3 4 STATEMENT

5 1. The Lawsuit

6 The plaintiffs filed the lawsuit on June 20, 2019, claiming the following: (1) violations of the
 7 UCL, Cal. Bus. & Prof. Code § 17200, *et seq.*; (2) violations of the FAL, Cal. Bus. & Prof. Code §
 8 17500, *et seq.*; (3) violations of the CLRA, Cal. Civ. Code § 1750, *et seq.*; (4) a claim for public-
 9 injunctive relief to permanently enjoin the false advertising and deception, in violation of Cal. Civ.
 10 Code § 3422; and (5) breach of the implied covenant of good faith and fair dealing.⁴ On August 16,
 11 2019, AT&T moved to compel arbitration, but the court ultimately denied the motion.⁵ AT&T later
 12 moved to dismiss, but the court denied the motion except for holding that, for statute-of-limitations
 13 purposes, the discovery rule did not apply and AT&T's conduct was not a continuing violation.⁶
 14 The plaintiffs then filed a first amended complaint on September 21, 2021, with the same five
 15 claims but replaced one of the named plaintiffs with two others and added a request for damages for
 16 the CLRA claim.⁷ AT&T answered the first amended complaint on October 21, 2021.⁸

17 At the time of settlement, AT&T had recently filed motions to stay the case and compel
 18 arbitration, prompted by the Supreme Court's grant of certiorari in *Viking River Cruises, Inc. v.*
 19 *Moriana*, No. 20-1573 (U.S. cert. granted, Dec. 15, 2021).⁹ Also, the plaintiffs "were preparing
 20 their class-certification motion, which was scheduled to be filed on March 23, 2022."¹⁰

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23 ³ Settlement Agreement, Ex. 1 to Heller Decl. – ECF No. 145-1 at 14–62; Mot. – ECF No. 145.

24 ⁴ Compl. – ECF No. 1.

25 ⁵ Mot. to Compel Arbitration – ECF No. 20; Order – ECF No. 56.

26 ⁶ Mot. to Dismiss – ECF No. 67; Order – ECF No. 88.

27 ⁷ FAC – ECF No. 118.

28 ⁸ Answer – ECF No. 124.

⁹ Mot. for Stay – ECF No. 137; Mot. to Compel Arbitration – ECF No. 138.

¹⁰ Mot. – ECF No. 145 at 21.

1 The parties engaged in extensive discovery, including “reviewing more than 60,000 pages of
2 internal documents,” “deposing five pertinent AT&T executives/employees,” review and analysis
3 of data on class members’ accounts and fees paid, “third-party discovery of two accounting firms
4 that assisted AT&T in connection with” the administrative fee, and “substantial written
5 discovery.”¹¹

6 The parties reached their settlement after two mediations. The first was on November 10,
7 2020, with Eric Green. The second was on February 17, 2022, with Robert Meyer of JAMS. At
8 the second mediation, the parties reached an agreement in principle to settle, and subsequently
9 they finalized the settlement.¹² The settlement agreement was executed on May 10, 2022.¹³

10 On May 10, 2022, the plaintiffs moved for preliminary approval of the settlement.¹⁴ The court
11 held a hearing on June 16, 2022. The parties consented to magistrate-judge jurisdiction.¹⁵

12 13 **2. The Proposed Settlement**

14 All defined terms in this Preliminary Approval Order have the same meaning as in the
15 Settlement Agreement. (The terms are capitalized below, even if that is grammatically awkward.)

16 **2.1 Settlement Class**

17 The Settlement Class is defined as follows:

18 All consumers residing in California (based on the Accountholder’s last known
19 billing address) with a post-paid wireless service plan from AT&T Mobility LLC
20 through a Consumer or Individual Responsibility User (IRU) account and who
21 were charged an Administrative Fee on such account between June 20, 2015 and
22 the date of preliminary settlement approval.¹⁶

23 The definition is limited to those with consumer or IRU accounts to specify that those with
24 “corporate responsibility user” accounts (“persons who receive [AT&T wireless] services through

25 ¹¹ Heller Decl. – ECF No. 145-1 at 9 (¶ 20).

26 ¹² *Id.* at 9–10 (¶¶ 22–23).

27 ¹³ Settlement Agreement, Ex. 1 to Heller Decl. – ECF No. 145-1 at 59–62.

28 ¹⁴ Mot. – ECF No. 145.

¹⁵ Consents – ECF Nos. 7, 19.

¹⁶ Settlement Agreement, Ex. 1 to Heller Decl. – ECF No. 145-1 at 24–25 (§ II.A.30).

1 a group plan” and whose employers pay the monthly bill) are not included.¹⁷ Also excluded from
 2 the Settlement Class are consumers “who assert claims and seek relief in connection with the
 3 Administrative Fee and who have provided AT&T with an unresolved written Notice of Dispute
 4 (pursuant to AT&T’s contractual dispute resolution procedures) before the Execution Date.”¹⁸ The
 5 Execution Date was May 10, 2022.¹⁹

6 “According to AT&T’s records there are approximately 5,425,000 Settlement Class
 7 Accounts.”²⁰ (Under the Settlement Agreement, AT&T accounts are used to determine class
 8 membership: “[o]nly one valid Claim may be submitted for each Settlement Class Account.”²¹)

9 **2.2 Settlement Amount and Allocation**

10 The gross Settlement Fund is \$14,000,000 and is fully non-reversionary.²² The Net
 11 Distributable Funds — the funds recovered by the Settlement Class — will be determined after the
 12 following deductions: (1) Administrative Costs (estimated at \$813,000 and including an
 13 Administrative Costs Advance of \$600,000); (2) any attorney’s fees and costs approved by the
 14 court (fees are not to exceed \$3,500,000, which is twenty-five percent of the Settlement Fund);
 15 and (3) any service awards for the Plaintiffs approved by the court (not to exceed \$3,500 for each
 16 Plaintiff).²³ Settlement Class Counsel will move for an award of attorney’s fees and costs “[n]o
 17 later than fifteen days following the Notice Date.”²⁴

18 The Net Distributable Funds will be distributed equally to all Settlement Class Members who
 19 submit a claim form. Specifically, “[a]ll Settlement Class Accounts will be eligible to submit a
 20 simple claim (electronically via the Settlement Website or by mail)” and “[a]ll Settlement Class
 21

22 ¹⁷ Mot. – ECF No. 145 at 13 & n.3.

23 ¹⁸ Settlement Agreement, Ex. 1 to Heller Decl. – ECF No. 145-1 at 25 (§ II.A.30).

24 ¹⁹ *Id.* at 57 (§ XII.S), 59–62.

25 ²⁰ *Id.* at 25 n.1.

26 ²¹ *Id.* at 30 (§ IV.C.2.d).

27 ²² *Id.* at 27–28 (§ IV.A).

28 ²³ *Id.* at 21 (§ II.A.4), 27–28 (§ IV.A), 50 (§ XI.A), 51 (§ XI.F); Weisbrot Decl. – ECF No. 145-6 at 9 (¶ 37).

²⁴ Settlement Agreement, Ex. 1 to Heller Decl. – ECF No. 145-1 at 50 (§ XI.A).

1 Accounts that submit a valid claim by the Claim Deadline . . . will receive an equal share of the
 2 Net Distributable Funds.”²⁵ The plaintiffs estimate that the individual payment amounts will be
 3 about \$15–\$29.²⁶

4 How each Settlement Class Member who submits a claim form will receive his/her payment
 5 depends on whether he/she is still an AT&T customer. If so, payment “will be via automatic credit
 6 to their AT&T accounts.” If not, payment “will be via mailed check, with appropriate steps taken
 7 to locate updated address information and re-issue checks that are returned undeliverable.”²⁷ “Any
 8 residual funds remaining one year after checks are initially mailed . . . will be treated as unclaimed
 9 property of the corresponding customers, subject to applicable state unclaimed property
 10 procedures.”²⁸

11 **2.3 Release**

12 “Settlement Class Members will release AT&T and its affiliates from any claims about the
 13 issues in this case. The scope of the release substantively tracks the scope of the operative [first
 14 amended complaint].”²⁹ Settlement Class Members also waive their rights under California Civil
 15 Code § 1542 and any similar provisions of federal or state law.³⁰

16 **2.4 Administration**

17 Angeion Group is the proposed Settlement Administrator.³¹ Angeion “was selected through a
 18 competitive bidding process” and “is a well-known administration firm that has successfully
 19 administrated numerous class settlements and judgments.”³²

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 21 ²⁵ Mot. – ECF No. 145 at 14; Settlement Agreement, Ex. 1 to Heller Decl. – ECF No. 145-1 at 29–35
 (§ IV.C); Claim Form, Ex. G to *id.* – ECF No. 145-1 at 88–89.

22 ²⁶ Mot. – ECF No. 145 at 14.

23 ²⁷ *Id.*; Settlement Agreement, Ex. 1 to Heller Decl. – ECF No. 145-1 at 31–34 (§ IV.C.4).

24 ²⁸ Mot. – ECF No. 145 at 14 & n.4; Settlement Agreement, Ex. 1 to Heller Decl. – ECF No. 145-1 at
 34–35 (§ IV.C.5).

25 ²⁹ Mot. – ECF No. 145 at 19 & n.6; Settlement Agreement, Ex. 1 to Heller Decl. – ECF No. 145-1 at
 44–47 (§ IX).

26 ³⁰ Settlement Agreement, Ex. 1 to Heller Decl. – ECF No. 145-1 at 46 (§ IX.E).

27 ³¹ *Id.* at 24 (§ II.A.28); Weisbrot Decl. – ECF No. 145-6.

28 ³² Mot. – ECF No. 145 at 15; Weisbrot Decl. – ECF No. 145-6 at 2–3 (¶¶ 1–10); Angeion Group
 Resume, Ex. A to *id.* – ECF No. 145-6 at 11–31.

1 Among other duties, Angeion will administer the notice program.³³ The notice program
 2 consists of (1) direct notice to Settlement Class Members in the form of email, first-class mail, and
 3 text message (the mailed notice will go only to those who do not receive the other direct notices,
 4 and Angeion will use standard methods of updating addresses and re-mailing any mailed notices
 5 that are returned undeliverable), plus reminder emails and text messages, (2) a social media
 6 campaign using Facebook and Instagram, and (3) a Settlement Website and Toll-Free Number.³⁴

7 The procedures for exclusion and objection are also in the Settlement Agreement.³⁵

8 ANALYSIS

9 1. Jurisdiction

10 The court has diversity jurisdiction under the Class Action Fairness Act (CAFA). 28 U.S.C. §
 11 1332(d)(2).
 12

13 2. Certification of Settlement Class

14 The court reviews the propriety of class certification under Federal Rule of Civil Procedure
 15 23(a) and (b). When parties enter into a settlement before the court certifies a class, the court
 16 “must pay ‘undiluted, even heightened, attention’ to class certification requirements” because the
 17 court will not have the opportunity to adjust the class based on information revealed at trial. *Staton*
 18 *v. Boeing Co.*, 327 F.3d 938, 952–53 (9th Cir. 2003) (quoting *Amchem Prods., Inc. v. Windsor*, 521
 19 U.S. 591, 620 (1997)); *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (9th Cir. 1998).
 20

21 Class certification requires the following: (1) the class is so numerous that joinder of all
 22 members individually is “impracticable;” (2) there are questions of law or fact common to the
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24 ³³ Settlement Agreement, Ex. 1 to Heller Decl. – ECF No. 145-1 at 35 (§ V.1(a)).

25 ³⁴ Mot. – ECF No. 145 at 16–18; Settlement Agreement, Ex. 1 to Heller Decl. – ECF No. 145-1 at 36–
 26 41 (§ VI); Weisbrot Decl. – ECF No. 145-6 at 3–8 (¶¶ 12–33); Email Notice, Ex. A to Settlement
 27 Agreement – ECF No. 145-1 at 64–66; Postcard Notice, Ex. B to *id.* – ECF No. 145-1 at 68–71;
 Website Notice, Ex. C to *id.* – ECF No. 145-1 at 73–80; Text Message Notice, Ex. D to *id.* – ECF No.
 145-1 at 82; Reminder Email Notice, Ex. E to *id.* – ECF No. 145-1 at 84; Reminder Text Message
 Notice, Ex. F to *id.* – ECF No. 145-1 at 86.

28 ³⁵ Settlement Agreement, Ex. 1 to Heller Decl. – ECF No. 145-1 at 41–44 (§§ VII–VIII).

1 class; (3) the claims or defenses of the class representatives are typical of the claims or defenses of
2 the class; and (4) the person representing the class will fairly and adequately protect the interests
3 of all class members. Fed. R. Civ. P. 23(a); *Staton*, 327 F.3d at 953. Also, the common questions of
4 law or fact must predominate over any questions affecting only individual class members, and the
5 class action must be superior to other available methods for fairly and efficiently adjudicating the
6 controversy. Fed. R. Civ. P. 23(b)(3).

7 The court finds (for settlement purposes only) that the proposed settlement class meets the
8 Rule 23(a) prerequisites of numerosity, commonality, typicality, and adequacy. Also, under Rule
9 23(b)(3) (and for settlement purposes only), common questions predominate over any questions
10 affecting only individual members, and a class action is superior to other available methods.

11 First, with over five million members, the class is numerous.

12 Second, there are questions of law and fact common to the class. The case is about an
13 administrative fee uniformly applied to all class members' AT&T accounts, thereby causing the
14 same alleged injury to all class members. Common questions include "whether AT&T's alleged
15 omissions were material, whether AT&T's characterization of the [administrative fee] on the bills
16 was accurate, and whether AT&T's charging of the [administrative fee] was unfair."³⁶ Thus, the
17 claims depend on common contentions, the determination of which "will resolve an issue that is
18 central to the validity of each one of the claims in one stroke." *Wal-Mart Stores, Inc. v. Dukes*, 564
19 U.S. 338, 350 (2011); *Betorina v. Randstad US, L.P.*, No. 15-cv-03646-EMC, 2017 WL 1278758, at
20 *4 (N.D. Cal. Apr. 6, 2017). Furthermore, these common questions predominate over any questions
21 affecting only individual members.

22 Third, the claims of the representative parties are typical of the claims of the class. The
23 representative parties and all class members allege the same violations based on similar facts. All
24 representatives possessed the same interest and suffered the same injury as the rest of the class.
25 *See Betorina*, 2017 WL 1278758, at *4.

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28 ³⁶ Mot. – ECF No. 145 at 25.

1 Fourth, the representative parties will fairly and adequately protect the interests of the class.
 2 Two factors are relevant to the adequacy determination: (1) whether the named plaintiffs and their
 3 counsel have potential conflicts with the other class members; and (2) whether counsel chosen by
 4 the representative party is qualified, experienced, and able to vigorously conduct the litigation. *In*
 5 *re Hyundai and Kia Fuel Econ. Litig.*, 926 F.3d 539, 566 (9th Cir. 2019) (citing *Hanlon*, 150 F.3d
 6 at 1020). Here, the named plaintiffs have shared claims and interests with the class (and no
 7 conflicts of interest), and they retained qualified and competent counsel who have prosecuted the
 8 case vigorously.³⁷ *See id.*; *Loc. Joint Exec. Bd. of Culinary/Bartender Tr. Fund v. Las Vegas Sands,*
 9 *Inc.*, 244 F.3d 1152, 1162 (9th Cir. 2001); *Hanlon*, 150 F.3d at 1021–22.

10 Finally, a class action is superior to other available methods for fairly and efficiently
 11 adjudicating the controversy, especially “given the relatively small amounts of alleged damages
 12 for each individual consumer.”³⁸ Fed. R. Civ. P. 23(b)(3).

13 In sum, the prerequisites of Rule 23(a) and (b)(3) are met. The court certifies the class under
 14 Rule 23(b)(3) for settlement purposes only.

16 **3. Preliminary Approval of Settlement**

17 A court may approve a proposed class-action settlement only “after a hearing and only on
 18 finding that it is fair, reasonable, and adequate after considering whether”:

- 19 (A) the class representatives and class counsel have adequately represented the class;
- 20 (B) the proposal was negotiated at arm’s length;
- 21 (C) the relief provided for the class is adequate, taking into account:
 - 22 (i) the costs, risks, and delay of trial and appeal;
 - 23 (ii) the effectiveness of any proposed method of distributing relief to the
 class, including the method of processing class-member claims;
 - 24 (iii) the terms of any proposed award of attorney’s fees, including timing of
 payment; and
 - 25 (iv) any agreement required to be identified under Rule 23(e)(3); and
- 26 (D) the proposal treats class members equitably relative to each other.

27 ³⁷ *Id.* at 26 & n.15.

28 ³⁸ *Id.* at 27.

1 Fed. R. Civ. P. 23(e)(2). These factors “are substantially similar to those articulated” in *Hanlon*,
2 150 F. 3d at 1027. *Student A v. Berkeley Unified Sch. Dist.*, No. 17-cv-02510-JST, 2021 WL
3 6332353, at *2 n.2 (N.D. Cal. July 8, 2021).

4 In *Hanlon*, the Ninth Circuit identified factors relevant to assessing a settlement proposal: (1)
5 the strength of the plaintiff’s case; (2) the risk, expense, complexity, and likely duration of further
6 litigation; (3) the risk of maintaining class-action status throughout trial; (4) the amount offered in
7 settlement; (5) the extent of discovery completed and the stage of the proceeding; (6) the
8 experience and views of counsel; (7) the presence of a government participant; and (8) the reaction
9 of class members to the proposed settlement. 150 F.3d at 1026.

10 When parties “negotiate a settlement agreement before the class has been certified, settlement
11 approval requires a higher standard of fairness and a more probing inquiry than may normally be
12 required under Rule 23(e).” *Roes, 1–2 v. SFBSC Mgmt., LLC*, 944 F.3d 1035, 1048 (9th Cir. 2019)
13 (cleaned up). “Specifically, such settlement agreements must withstand an even higher level of
14 scrutiny for evidence of collusion or other conflicts of interest than is ordinarily required under
15 Rule 23(e) before securing the court’s approval as fair.” *Id.* at 1048–49 (cleaned up).

16 The court has evaluated the Settlement Agreement for overall fairness and concludes
17 preliminarily that it is free of collusion and approval is appropriate.

18 First, the settlement provides good value. The plaintiffs offer two methods of assessing the
19 settlement value, both informed by the extensive discovery conducted in this case. First, the
20 plaintiffs’ estimated \$15–\$29 individual payment amounts “represent[] a refund of approximately
21 6–11 months of the average [administrative] fees” charged by AT&T.³⁹ “As an additional point of
22 comparison,” the estimated individual payment amounts “represent[] a refund of approximately
23 8.3%–16.1% of the average total [administrative] fees paid during the class period.”⁴⁰ These
24 figures reflect a substantial recovery, especially given that they rely on the net rather than gross
25 settlement amount. The figures are also similar to the settlement in a similar class action against
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27 ³⁹ *Id.* at 22.

28 ⁴⁰ *Id.*

1 AT&T, approval of which was granted.⁴¹ *Roberts v. AT&T Mobility LLC*, No. 15-cv-03418-EMC,
2 Order – ECF No. 215 (N.D. Cal. Aug. 20, 2021).

3 Second, the value of the settlement is significant compared to the litigation risks and
4 uncertainties. At the time of settlement, AT&T was vigorously contesting the case and had
5 recently filed motions to stay the case and compel arbitration, prompted by the Supreme Court’s
6 grant of certiorari in *Viking River Cruises, Inc. v. Moriana*, No. 20-1573 (U.S. cert. granted, Dec.
7 15, 2021).⁴² Liability “remain[ed] very much disputed” and AT&T planned to assert various
8 arguments and defenses.⁴³ In addition, the plaintiffs had not yet moved for class certification.
9 When viewed against the risk of no recovery, this settlement is fair. *Dyer v. Wells Fargo Bank,*
10 *N.A.*, 303 F.R.D. 326, 331 (N.D. Cal. 2014) (litigation risks, including maintaining class-action
11 status, favor settlement approval). Moreover, settlement allows payment to the Class Members
12 now, before costly and protracted litigation.

13 Third, a class action allows class members — who otherwise would not pursue their claims
14 individually because costs would exceed recoveries — to obtain relief.

15 Finally, the settlement is the product of serious, non-collusive, arm’s-length negotiations and
16 was reached after two mediations with experienced mediators.

17 In sum, viewed as a whole, the proposed settlement is sufficiently “fair, adequate, and
18 reasonable” to warrant preliminary approval. *See Officers for Just. v. Civ. Serv. Comm’n of City*
19 *and Cnty. of S.F.*, 688 F.2d 615, 625 (9th Cir. 1982).

20 Settlement Class Counsel have not yet moved for attorney’s fees, and in any case the court will
21 address the issue of attorney’s fees at the final fairness hearing. *See Hanlon*, 150 F.3d at 1029
22 (twenty-five percent is a benchmark in common fund cases); *cf. Vizcaino v. Microsoft Corp.*, 290
23 F.3d 1043, 1048 (9th Cir. 2002) (twenty-five percent benchmark, though a starting point for
24 analysis, may be inappropriate in some cases; fees must be supported by findings).

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27 ⁴¹ Chart Comparing Cases, Ex. 3 to Heller Decl. – ECF No. 145-1 at 270–71.

28 ⁴² Mot. for Stay – ECF No. 137; Mot. to Compel Arbitration – ECF No. 138.

⁴³ Mot. – ECF No. 145 at 22.

1 **4. Appointment of Class Representative, Class Counsel, and Settlement Administrator**

2 The court appoints the class representatives for settlement purposes only: Ian Vianu, Elizabeth
3 Blum, and Dominic Gutierrez. They have claims that are typical of members of the class generally,
4 and they are adequate representatives of the other members of the proposed class.⁴⁴

5 The court appoints Angeion Group as the Settlement Administrator. It will administer the
6 settlement in accordance with the requirements set forth in the Settlement Agreement.

7 The court also appoints Settlement Class Counsel: Roger N. Heller, Michael W. Sobol, and
8 Daniel E. Seltz of Lieff, Cabraser, Heimann & Bernstein, LLP; and Daniel M. Hattis of Hattis &
9 Lukacs. Fed. R. Civ. P. 23(a) & (g)(1). They have sufficient qualifications, experience, and
10 expertise in prosecuting class actions.⁴⁵

11
12 **5. Class Notice**

13 The court approves the class notice and plan. The notice plan provides the best notice
14 practicable, satisfies the notice requirements of Rule 23, adequately advises class members of their
15 rights under the settlement agreement, and meets the requirements of due process. *Cf. In re Hyundai*
16 *and Kia*, 926 F.3d at 567 (“Notice is satisfactory if it generally describes the terms of the settlement
17 in sufficient detail to alert those with adverse viewpoints to investigate and to come forward and be
18 heard.”) (cleaned up).

19 The forms of notice fairly, plainly, accurately, and reasonably provide class members with all
20 required information, including the following: (1) a summary of the lawsuit and claims asserted;
21 (2) a clear definition of the class; (3) a description of the material terms of the settlement,
22 including the estimated payment; (4) a disclosure of the release of the claims; (5) the date, time,
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27 ⁴⁴ Vianu Decl. – ECF No. 145-3; Blum Decl. – ECF No. 145-4; Gutierrez Decl. – ECF No. 145-5.

28 ⁴⁵ Heller Decl. – ECF No. 145-1 at 2–6 (¶¶ 3–8); Lieff Cabraser Firm Resume, Ex. 2 to *id.* – ECF No. 145-1 at 114–268; Hattis Decl. – ECF No. 145-2.

1 and location of the final fairness hearing; and (6) the identity of class counsel and the provisions
2 for attorney’s fees, costs, and class-representative service awards.⁴⁶

3 4 **6. Service Awards**

5 District courts must evaluate proposed awards individually, using relevant factors that include
6 “the actions the plaintiff has taken to protect the interests of the class, the degree to which the class
7 has benefitted from those actions, . . . [and] the amount of time and effort the plaintiff expended in
8 pursuing the litigation.” *Staton*, 327 F.3d at 977 (cleaned up). “Such awards are discretionary . . . and
9 are intended to compensate class representatives for work done on behalf of the class, to make up for
10 financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their
11 willingness to act as a private attorney general.” *Rodriguez v. W. Publ’g Corp.*, 563 F.3d 948, 958–59
12 (9th Cir. 2009) (citation omitted). The Ninth Circuit has “noted that in some cases incentive awards
13 may be proper but [has] cautioned that awarding them should not become routine practice.” *Radcliffe*
14 *v. Experian Info. Sols. Inc.*, 715 F.3d 1157, 1163 (9th Cir. 2013) (discussing *Staton*, 327 F.3d at 975–
15 78). District courts “must be vigilant in scrutinizing all incentive awards to determine whether they
16 destroy the adequacy of the class representatives.” *Id.* at 1164. In this district, a \$5,000 incentive
17 award is presumptively reasonable. *Bellinghausen v. Tractor Supply Co.*, 306 F.R.D. 245, 266 (N.D.
18 Cal. 2015) (collecting cases).

19 The court defers consideration of the service awards until the Fairness Hearing.

20 21 **7. Compliance with CAFA**

22 The Settlement Agreement provides for compliance with CAFA: within ten days of the filing
23 of the preliminary-approval motion, AT&T was to “serve a notice of the proposed Settlement, in
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26 ⁴⁶ Mot. – ECF No. 145 at 16–18; Settlement Agreement, Ex. 1 to Heller Decl. – ECF No. 145-1 at 36–
27 41 (§ VI); Weisbrot Decl. – ECF No. 145-6 at 3–8 (¶¶ 12–33); Email Notice, Ex. A to Settlement
28 Agreement – ECF No. 145-1 at 64–66; Postcard Notice, Ex. B to *id.* – ECF No. 145-1 at 68–71;
Website Notice, Ex. C to *id.* – ECF No. 145-1 at 73–80; Text Message Notice, Ex. D to *id.* – ECF No.
145-1 at 82; Reminder Email Notice, Ex. E to *id.* – ECF No. 145-1 at 84; Reminder Text Message
Notice, Ex. F to *id.* – ECF No. 145-1 at 86.

1 accordance with 28 U.S.C. § 1715,” on the appropriate state and federal officials.⁴⁷ Any final
2 settlement approval will be more than ninety days after service as required by the Act.

3 4 **8. Procedures for Final Approval Hearing**

5 **8.1 Deadlines**

6 The court approves the parties’ proposed schedule set forth in paragraph 42 of the amended
7 proposed order.⁴⁸ The Fairness Hearing will be on November 3, 2022, at 9:30 a.m.

8 **8.2 Fairness Hearing**

9 At the hearing, the court will consider whether to (1) finally approve the settlement agreement
10 and the releases in it, (2) finally approve the service awards, and (3) award attorney’s fees and
11 costs to Settlement Class Counsel. The court may, for good cause, extend any of the deadlines or
12 continue the Fairness Hearing without further notice to the Settlement Class Members.

13 **8.3 Objections to or Exclusions from the Settlement**

14 The objection and exclusion procedures will be those in the Settlement Agreement.⁴⁹

15 16 **9. Ancillary Items**

17 If the Settlement does not occur for any reason, certification of the Settlement Class and any
18 Settlement Class Representative or Settlement Class Counsel appointments, including this order,
19 will be deemed void and vacated. The Parties preserve all rights and defenses as they existed prior
20 to the execution of the Settlement Agreement and this order in the event the Settlement Agreement
21 is not finally approved by the court or otherwise does not take effect.⁵⁰

22 The court directs the Parties and Settlement Administrator to comply with all aspects of
23 paragraphs 13 through 23 of the amended proposed order.⁵¹

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25 ⁴⁷ Settlement Agreement, Ex. 1 to Heller Decl. – ECF No. 145-1 at 40 (§ VI.7).

26 ⁴⁸ Am. Proposed Order – ECF No. 147-1 at 13 (¶ 42).

27 ⁴⁹ Settlement Agreement, Ex. 1 to Heller Decl. – ECF No. 145-1 at 41–44 (§§ VII–VIII).

28 ⁵⁰ Am. Proposed Order – ECF No. 147-1 at 4 (¶ 7).

⁵¹ *Id.* at 5–8 (¶¶ 13–23) (incorporated by this reference).

1 Within thirty days following entry of this Preliminary Approval Order, AT&T will pay the
2 Administrative Costs Advance to the Settlement Administrator in the amount of \$600,000.⁵²

3 By no later than fourteen days before the Fairness Hearing, the Settlement Administrator will
4 file (or provide to Settlement Class Counsel for filing) a declaration confirming that Notice
5 program has been implemented in accordance with the Settlement Agreement and this order
6 (including CAFA notice) and providing a final list of persons who submitted timely and valid
7 requests for requests for exclusion from the Settlement Class.⁵³

8 By no later than fourteen days before the Fairness Hearing, the Settlement Administrator will
9 file (or provide to Settlement Class Counsel for filing) copies of any objections received by the
10 Settlement Administrator.⁵⁴

11 The court approves the form and content of the proposed Claim Form, in the form attached as
12 Exhibit G to the Settlement Agreement, approves the Claims Process set forth in the Settlement
13 Agreement for Settlement Class Members to submit Claims, and directs the Parties and the
14 Settlement Administrator to implement the Claims Process.⁵⁵

15 For objections and exclusions to be effective, Settlement Class Members must comply with
16 paragraphs 27 and 28 of the amended proposed order.⁵⁶

17 In the event the court changes the date, time, and/or the format of the Fairness Hearing, the
18 Parties must ensure that the updated information is posted on the Settlement Website.⁵⁷

19 If the Settlement Agreement, including any amendment made in accordance therewith, is not
20 approved by the Court or does not become effective for any reason whatsoever, the Settlement
21 Agreement and any actions taken or to be taken in connection therewith (including this
22 Preliminary Approval Order and any judgment entered herein), will be terminated and become
23

24 ⁵² *Id.* at 8 (¶ 24).

25 ⁵³ *Id.* (¶ 25).

26 ⁵⁴ *Id.* at 11 (¶ 31).

27 ⁵⁵ *Id.* at 9 (¶ 26).

28 ⁵⁶ *Id.* at 9–10 (¶¶ 27–28).

⁵⁷ *Id.* at 11 (¶ 33).

1 null and void except for (i) any obligations to pay for any expense incurred in connection with
2 Notice and administration as set forth in the Settlement Agreement, and (ii) any other obligations
3 or provisions that are expressly designated in the Settlement Agreement to survive the termination
4 of the Settlement Agreement.⁵⁸

5 Other than such proceedings as may be necessary to carry out the terms and conditions of the
6 Settlement Agreement, all proceedings in the Action are hereby stayed and suspended until further
7 order of the court.⁵⁹

8 Pending determination of whether the Settlement Agreement should be finally approved,
9 Plaintiffs and all Settlement Class Members are barred and enjoined from filing, commencing,
10 prosecuting, or enforcing any action against the Released Parties insofar as such action asserts
11 Released Claims, directly or indirectly, in any forum.⁶⁰

12 This Preliminary Approval Order, the Settlement Agreement, and all negotiations, statements,
13 agreements, and proceedings relating to the Settlement, or any matters arising in connection with
14 settlement negotiations, proceedings, or agreements, must not constitute, be described as,
15 construed as, offered or received against AT&T or the other Released Parties as evidence or an
16 admission of: (a) the truth of any fact alleged by Plaintiffs in the Action; (b) that any person
17 suffered compensable harm or is entitled to any relief with respect to the matters asserted in this
18 Action; (c) any liability, negligence, fault, or wrongdoing by AT&T or the Released Parties,
19 including any of its affiliates, agents, representatives, vendors, or any other person or entity acting
20 on its behalf; (d) that this Action or any other action was or may be properly certified as a class
21 action for litigation, non-settlement purposes; (e) the arbitrability of the Action as to Plaintiffs and
22 Settlement Class Members; or (f) the enforceability of any applicable contractual or statutory
23 limitations period to limit any relief.⁶¹

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26 ⁵⁸ *Id.* at 12 (¶ 35).

27 ⁵⁹ *Id.* (¶ 36).

28 ⁶⁰ *Id.* (¶ 37).

⁶¹ *Id.* at 12–13 (¶ 38).

United States District Court
Northern District of California

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The court retains jurisdiction over this Action to consider all further matters arising out of or connected with the Settlement, including enforcement of the Release provided for in the Settlement Agreement.⁶²

Without further order of the court, the Parties may agree to make non-material modifications in implementing the Settlement that are not inconsistent with this Preliminary Approval Order.⁶³

CONCLUSION

The court (1) preliminarily approves the settlement and authorizes the notices as set forth in this order, (2) approves the notice plan, (3) provisionally appoints the class representatives and class counsel, (4) appoints Angeion Group as the settlement administrator, (5) orders the procedures in this order, and (6) orders the parties and Angeion to carry out their obligations pursuant to the Settlement Agreement. The schedule for all events is summarized in the chart in the amended proposed order.⁶⁴ The final fairness hearing is November 3, 2022, at 9:30 a.m.

This disposes of ECF No. 145.

IT IS SO ORDERED.

Dated: June 16, 2022



LAUREL BEELER
United States Magistrate Judge

⁶² *Id.* at 13 (¶ 39).

⁶³ *Id.* (¶ 41).

⁶⁴ *Id.* (¶ 42).

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

IAN VIANU, ELIZABETH BLUM, and
DOMINIC GUTIERREZ, on behalf of
themselves and all others similarly situated,

Plaintiffs,

v.

AT&T MOBILITY LLC,

Defendant.

Case No. 3:19-cv-03602-LB

~~PROPOSED~~ ORDER GRANTING
PRELIMINARY APPROVAL OF CLASS
SETTLEMENT AGREEMENT AND
DIRECTING DISSEMINATION OF CLASS
NOTICE

Judge: Hon. Laurel Beeler

1 Before the Court is the Motion for Preliminary Approval of Class Settlement Agreement
2 and for Direction of Class Notice Pursuant to Fed. R. Civ. P. 23(e) (“Motion”), filed by Plaintiffs
3 Ian Vianu, Elizabeth Blum, and Dominic Gutierrez (“Plaintiffs”). Plaintiffs and Defendant
4 AT&T Mobility LLC (“AT&T”) have entered into a Class Settlement Agreement, dated May 10,
5 2022 (“Settlement Agreement”). Having thoroughly reviewed the Settlement Agreement,
6 including the proposed forms of class notice and other exhibits thereto, the Motion, and the
7 papers and arguments in connection therewith, and good cause appearing, the Court hereby
8 ORDERS as follows:

9 1. Capitalized terms not otherwise defined herein have the meanings set forth in the
10 Settlement Agreement.

11 2. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C.
12 § 1332(d), and has personal jurisdiction over the Parties and the Settlement Class Members.
13 Venue is proper in this District.

14 3. The Motion is GRANTED.

15 4. The Court hereby preliminarily approves the Settlement Agreement and the terms
16 embodied therein pursuant to Fed. R. Civ. P. 23(e)(1). The Court finds that it will likely be able
17 to approve the Settlement Agreement under Fed. R. Civ. P. 23(e)(2) and to certify the Settlement
18 Class for purposes of judgment on the proposed Settlement. The Court preliminarily finds that
19 the Settlement Agreement is fair, reasonable, and adequate as to the Settlement Class Members
20 under the relevant considerations. The Court finds that Plaintiffs and proposed Settlement Class
21 Counsel have adequately represented, and will continue to adequately represent, the Settlement
22 Class. The Court further finds that the Settlement Agreement is the product of arms’ length
23 negotiations by the Parties through an experienced mediator, Robert Meyer, Esq. of JAMS, and
24 comes after significant litigation—including significant litigation regarding AT&T’s arbitration
25 motion and a litigated motion to dismiss—and significant investigation and discovery. The
26 Court preliminarily finds that the relief provided—a non-reversionary common settlement fund of
27 \$14 million—is adequate taking into account, *inter alia*, the costs, risks, and delay of trial and
28 appeal for all Parties, the legal issues presented in this Action, the interests of the proposed

1 Settlement Class, and the proposed method of distributing payments to the Settlement Class (i.e.,
 2 direct payments by account credits and checks). The Court preliminarily finds that the Settlement
 3 Agreement treats the Settlement Class Members equitably relative to each other, and that the
 4 proposed allocation of settlement funds to Settlement Class Members is reasonable and equitable.
 5 Under the terms of the Settlement Agreement, all Settlement Class Members are eligible to
 6 submit claims for equal settlement payments via a simple claim form. The Court will fully assess
 7 any request for attorneys' fees and litigation expenses after receiving a motion from Settlement
 8 Class Counsel supporting such request. At this stage, the Court finds that the plan to request fees
 9 and litigation expenses to be paid from the common settlement fund creates no reason not to
 10 direct notice to the Settlement Class; should this Court find any aspect of the requested attorneys'
 11 fees or expenses unsupported or unwarranted, such funds will not revert to AT&T.

12 5. The Court hereby provisionally certifies, for settlement purposes only, a
 13 "Settlement Class," pursuant to Fed. R. Civ. P. 23(a) and 23(b)(3), consisting of:

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 15 All consumers residing in California (based on the accountholder's last known
 16 billing address) with a post-paid wireless service plan from AT&T Mobility LLC
 17 through a Consumer or Individual Responsibility User (IRU) account and who
 were charged an Administrative Fee on such account between June 20, 2015 and
 the date of preliminary settlement approval.

18 Excluded from the Settlement Class are any Judge presiding over this Action and
 19 any members of their families; AT&T and affiliated entities and individuals and
 20 their respective officers and directors; and any otherwise covered consumers, other
 21 than Plaintiffs, who assert claims and seek relief in connection with the
 22 Administrative Fee and who have provided AT&T with an unresolved written
 Notice of Dispute (pursuant to AT&T's contractual dispute resolution procedures)
 before the Execution Date.

23 6. The Court finds that, for settlement purposes only, the Settlement Class, as
 24 defined above, meets the requirements for class certification under Fed. R. Civ. P. 23(a) and
 25 23(b)(3)—namely, that (1) the Settlement Class Members are sufficiently numerous such that
 26 joinder is impracticable; (2) there are common questions of law and fact; (3) Plaintiffs' claims are
 27 typical of those of the Settlement Class Members; (4) Plaintiffs and Settlement Class Counsel
 28 have adequately represented, and will continue to adequately represent, the interests of the

1 Settlement Class Members; and (5) for purposes of settlement only, the Settlement Class meets
2 the predominance and superiority requirements of Fed. R. Civ. P. 23(b)(3).

3 7. Certification of the Settlement Class and appointment of the Settlement Class
4 Representatives and Settlement Class Counsel shall be solely for settlement purposes and without
5 prejudice to the Parties in the event the Settlement Agreement is not finally approved by this
6 Court or otherwise does not take effect. If the Settlement does not occur for any reason,
7 certification of the Settlement Class and any Settlement Class Representative or Settlement Class
8 Counsel appointments, including this Order, shall be deemed void and vacated. The Parties
9 preserve all rights and defenses as they existed prior to the execution of the Settlement Agreement
10 and this Order in the event the Settlement Agreement is not finally approved by this Court or
11 otherwise does not take effect.

12 8. The Court hereby appoints Plaintiffs Ian Vianu, Elizabeth Blum, and Dominic
13 Gutierrez as Settlement Class Representatives to represent the Settlement Class.

14 9. The Court hereby appoints the following attorneys as Settlement Class Counsel for
15 the Settlement Class: Roger N. Heller, Michael W. Sobol, and Daniel E. Seltz of Lieff, Cabraser,
16 Heimann & Bernstein, LLP; and Daniel M. Hattis of Hattis & Lukacs.

17 10. The Court hereby appoints Angeion Group, LLC (“Angeion Group”) as Settlement
18 Administrator and directs Angeion Group to carry out all duties and responsibilities of the
19 Settlement Administrator as specified in the Settlement Agreement and herein.

20 Notice Program

21 11. Pursuant to Fed. R. Civ. P. 23(e)(1) and 23(c)(2)(B), the Court approves the
22 proposed Notice program set forth at Section VI of the Settlement Agreement, including the form
23 and content of the proposed forms of class notice attached as Exhibits A through F to the
24 Settlement Agreement. The Court finds that the proposed Notice program meets the requirements
25 of Due Process under the U.S. Constitution and Rule 23; and that such Notice program, which
26 includes individual direct notice to Settlement Class Members via SMS, email, and mail,
27 reminder email and SMS notices, a supplemental social media notice campaign, and the
28 establishment of a Settlement Website and Toll-Free Number, is the best notice practicable under

1 the circumstances and shall constitute due and sufficient notice to all persons entitled thereto.
2 The Court further finds that the proposed form and content of the forms of the Notice are
3 adequate and will give the Settlement Class Members sufficient information to enable them to
4 make informed decisions as to the Settlement Class, the right to object or opt out, and the
5 proposed Settlement and its terms. The Court finds that the Notice clearly and concisely states in
6 plain, easily understood language, *inter alia*: (i) the nature of the Action; (ii) the definition of the
7 Settlement Class; (iii) the class claims and issues; (iv) that a Settlement Class Member may enter
8 an appearance through an attorney if the member so desires; (v) that the Court will exclude from
9 the Settlement Class any member who timely and validly requests exclusion; (vi) the time and
10 manner for requesting exclusion; and (vii) the binding effect of a class judgment on Settlement
11 Class Members under Rule 23(c)(3).

12 12. The Court directs the Settlement Administrator and the Parties to implement the
13 Notice program as set forth in the Settlement Agreement.

14 13. Customer Data: By no later than fourteen days following entry of this
15 Preliminary Approval Order, AT&T shall provide the Customer Data to the Settlement
16 Administrator, including all of the information specified for same in the Settlement Agreement.

17 14. Email Notice: By no later than forty-five days following the entry of this
18 Preliminary Approval Order (hereinafter, the “Notice Date”), the Settlement Administrator shall
19 email the Email Notice (substantially in the form attached as Exhibit A to the Settlement
20 Agreement) to each Settlement Class Account for which an email address is included in the
21 Customer Data. The Email Notices shall be sent to the email addresses listed in the Customer
22 Data for such accounts. The Email Notices shall be sent with the sender title “AT&T Class
23 Action Settlement Administrator” and the subject line “Notice of AT&T / Vianu Class Action
24 Settlement ”

25 15. SMS Notice: The Court directs AT&T to send, by no later than the Notice Date,
26 via SMS (i.e., text message), the SMS Notice, substantially in the form attached as Exhibit D to
27 the Settlement Agreement, to the corresponding AT&T cellular telephone number(s) for each
28 Settlement Class Account for which the Customer Data identifies that both: (1) the account is a

1 current AT&T account; and (2) no accountholders for the account have opted out of receiving
2 such messages. Each SMS Notice shall include a hyperlink to a webpage, on the Settlement
3 Website, that includes the substance of the Email Notice. The recipients of the SMS Notices shall
4 not be charged for such messages. The Court expressly finds that the SMS messages ordered to
5 be sent under this paragraph are informational messages pertaining to the AT&T's subscribers'
6 service. By no later than three days following the Notice Date, AT&T shall provide to the
7 Settlement Administrator a list of Settlement Class Accounts that were successfully sent the SMS
8 Notice.

9 16. Mail Notice: For any Settlement Class Account where both (1) there is no email
10 address included in the Customer Data; and (2) the account is not among the Settlement Class
11 Accounts for which SMS Notice is to be sent pursuant to this Preliminary Approval Order (i.e.,
12 because, as identified in the Customer Data, the account is a former AT&T account or one or
13 more accountholder(s) for the account have opted-out of receiving informational SMS messages):
14 By no later than the Notice Date, the Settlement Administrator shall: (a) update the mailing
15 address listed in the Customer Data for such account through National Change of Address
16 Database; and (b) mail the Postcard Notice (substantially in the form attached as Exhibit B to the
17 Settlement Agreement) to them via first class U.S. mail, postage pre-paid, at their address as
18 updated.

19 17. For any Settlement Class Account where either (1) AT&T attempted but was not
20 successful in sending SMS Notice; or (2) the Settlement Administrator sent Email Notice but
21 received notice that the Email Notice was not received (i.e., a "bounce-back"): By no later than
22 ten days following the Notice Date, the Settlement Administrator shall: (a) update the mailing
23 address listed in the Customer Data for such account through National Change of Address
24 Database; and (b) mail the Postcard Notice (substantially in the form attached as Exhibit B to the
25 Settlement Agreement) to them via first class U.S. mail, postage pre-paid, at their address as
26 updated.

27 18. For any mailed Postcard Notices that are returned with forwarding address
28 information, the Settlement Administrator shall promptly re-mail the Postcard Notice to the new

1 address indicated. For any mailed Postcard Notices that are returned as undeliverable without a
2 forwarding address, the Settlement Administrator shall conduct an industry standard “skip trace”
3 to try to identify a more current address and re-mail the Postcard Notice to the extent an updated
4 address is identified.

5 19. Social Media Notice: Commencing no earlier than the Notice Date and ending by
6 the Claim Deadline, the Settlement Administrator shall implement an internet-based social media
7 notice campaign as set forth in Section VI.8 of the Settlement Agreement, to provide additional
8 notice to Settlement Class Members.

9 20. Settlement Website: The Settlement Administrator shall establish and maintain an
10 Internet website, at the URL www.ATTVianuClassActionSettlement.com (“Settlement
11 Website”), where Settlement Class Members can obtain further information about the terms of the
12 Settlement Agreement, their rights, important dates and deadlines, and related information.
13 Settlement Class Members shall also be able to submit Claim Forms electronically via the
14 Settlement Website. The Settlement Website shall include, in PDF format, the First Amended
15 Complaint in this Action, AT&T’s Answer to the First Amended Complaint, the Settlement
16 Agreement, the long-form Website Notice substantially in the form attached as Exhibit C to the
17 Settlement Agreement, this Preliminary Approval Order, Settlement Class Counsel’s fee and cost
18 application (after it is filed), and other case documents as agreed upon by the Parties and/or
19 required by the Court, and shall be operational and live before the first Postcard Notice, Email
20 Notice, or SMS Notice is disseminated. The Settlement Website shall be optimized for display on
21 mobile phones. The Settlement Website shall remain operational until at least one year after the
22 Payment Date or such other later date as the Parties may agree.

23 21. Toll-Free Number: The Settlement Administrator shall establish and maintain a
24 toll-free telephone number (“Toll-Free Number”) where Settlement Class Members can obtain
25 further information about the Settlement Agreement and their rights, and request that a hard copy
26 Claim Form or Website Notice be mailed to them. The Toll-Free Number shall be operational
27 and live by no later than one day before the first Postcard Notice, Email Notice, or SMS Notice is
28 disseminated, and shall remain operational until at least one year after the Payment Date or such

1 other later date as the Parties may agree.

2 22. Reminder Email Notice: No later than fourteen days after the Notice Date, the
3 Settlement Administrator shall email a Reminder Email Notice, substantially in the form attached
4 as Exhibit E to the Settlement Agreement, to each Settlement Class Account that was sent the
5 Email Notice. Depending on the volume of Claim Form submissions and in consultation with the
6 Parties, prior to the Claim Deadline, the Settlement Administrator may also cause a second
7 reminder email notice to be sent to Settlement Class Accounts that were sent the Reminder Email
8 Notice or to a portion of them that have not yet submitted a Claim Form.

9 23. Reminder SMS Notice: Between twenty-one days and fourteen days before the
10 Claim Deadline, AT&T shall send, via SMS (i.e., text message), a Reminder SMS Notice to the
11 corresponding AT&T cellular telephone number(s) for each Settlement Class Account where both
12 of the following apply: (a) the corresponding AT&T cellular telephone number was successfully
13 sent the SMS Notice; and (b) the Settlement Administrator reports that a Claim Form has not yet
14 been submitted for the account. By no later than thirty days before the deadline for sending the
15 Reminder SMS Notice, the Settlement Administrator shall report to AT&T regarding which
16 Settlement Class Accounts have not yet submitted a Claim Form. The Reminder SMS Notice
17 shall be substantially in the form attached as Exhibit F to the Settlement Agreement. The
18 recipients of the Reminder SMS Notices shall not be charged for such messages. The Court
19 expressly finds that the SMS messages ordered to be sent under this paragraph are informational
20 messages pertaining to the AT&T's subscribers' service.

21 24. Within thirty days following entry of this Preliminary Approval Order, AT&T
22 shall pay the Administrative Costs Advance to the Settlement Administrator in the amount of
23 \$600,000.

24 25. By no later than fourteen days before the Fairness Hearing, the Settlement
25 Administrator shall file (or provide to Settlement Class Counsel for filing) a declaration
26 confirming that Notice program has been implemented in accordance with the Settlement
27 Agreement and this Order (including CAFA notice) and providing a final list of persons who
28 submitted timely and valid requests for requests for exclusion from the Settlement Class.

1 Claims Procedure

2 26. The Court approves the form and content of the proposed Claim Form, in the
3 form attached as Exhibit G to the Settlement Agreement, approves the Claims Process set forth in
4 the Settlement Agreement for Settlement Class Members to submit Claims, and directs the Parties
5 and the Settlement Administrator to implement the Claims Process.

6 Opt-Out and Objection Procedures

7 27. Settlement Class Members may exclude themselves from the Settlement Class by
8 mailing or emailing to the Settlement Administrator, at the address/email address provided in the
9 Website Notice, a request for exclusion that is postmarked or emailed no later than sixty days
10 after the Notice Date (the “Exclusion/Objection Deadline”). To be effective, the request for
11 exclusion must include: (a) the Settlement Class Member’s full name, telephone number, mailing
12 address, and email address; (b) a clear statement that the Settlement Class Member wishes to be
13 excluded from the Settlement Class; (c) the name of this Action: “Vianu v. AT&T Mobility
14 LLC”; and (d) for requests for exclusion sent by mail, the Settlement Class Member’s signature
15 or a signature of an individual authorized to act on his or her behalf (no signature is required for
16 emailed requests for exclusion). If the person submitting the request for exclusion is doing so on
17 behalf of a Settlement Class Member (such as an attorney or estate), the request must also include
18 the full name of the person submitting the request and the basis of his, her or its authority to act
19 on behalf of the Settlement Class Member. Requests for exclusion must be made on an individual
20 basis; “mass,” “class,” or other purported group opt outs are not permitted. Any request for
21 exclusion from a Settlement Class Member that is a co-account holder on an account in the
22 Settlement Class must be submitted by all co-account holders on that account, otherwise the
23 request for exclusion is invalid for that account. Any Settlement Class Member who submits a
24 timely and valid request for exclusion is foreclosed from objecting to the Settlement or to
25 Settlement Class Counsel’s motion for attorneys’ fees, costs, and service awards. If a Settlement
26 Class Member submits both a timely and valid request for exclusion and an objection, the
27 Settlement Class Member shall be treated as if they had only submitted a request for exclusion.
28 Any Settlement Class Member who does not submit a timely and valid request for exclusion in

1 accordance with this paragraph shall be bound by the Final Order and Judgment if and when it is
2 entered. The Settlement Administrator, upon request, shall provide copies of all timely and valid
3 requests for exclusion, including any related correspondence, to Settlement Class Counsel and
4 AT&T's Counsel.

5 28. Any Settlement Class Member who does not submit a timely and valid request for
6 exclusion shall have the right to object to the proposed Settlement and/or to Settlement Class
7 Counsel's motion for attorneys' fees, costs, or service awards, only by complying with the
8 objection provisions set forth herein. Settlement Class Members who object shall remain
9 Settlement Class Members and shall be subject to the Release set forth in the Settlement
10 Agreement. To be considered valid, an objection must be in writing, must be filed with the Court
11 or mailed to the Court at the address listed in the Website Notice, postmarked/mailed no later than
12 sixty days after the Notice Date (the "Exclusion/Objection Deadline"), and must include the
13 following: (a) the name of this Action: "Vianu v. AT&T Mobility LLC"; (b) the full name,
14 mailing address, telephone number, and email address of the objector; (c) the objector's signature
15 or the signature of an individual authorized to act on his or her behalf; (d) a description of the
16 specific reasons for the objection; (e) the name, address, bar number and telephone number of
17 counsel for the objector, if the objector is represented by an attorney; and (f) state whether the
18 objector intends to appear at the Fairness Hearing either in person or through counsel. Only
19 objections that are submitted in accordance with this paragraph shall be heard by the Court. Any
20 Settlement Class Member who does not timely submit an objection in accordance with this
21 paragraph, shall waive the right to object or to be heard at the Fairness Hearing and shall be
22 forever barred from making any objection to the proposed Settlement or to Settlement Class
23 Counsel's motion for attorneys' fees, costs, and service awards. Any Settlement Class Member
24 who objects to the Settlement shall nevertheless be entitled to all benefits of the Settlement if it is
25 approved and becomes final. The Settlement Administrator shall promptly after receipt provide
26 copies of any objections the Settlement Administrator receives, including any related
27 correspondence, to Settlement Class Counsel and AT&T's Counsel.

1 Fairness Hearing

2 29. The Court will hold a Fairness Hearing on _____, 2022 at _____, in the
3 United States District Court for the Northern District of California, Courtroom B, 15th Floor, 450
4 Golden Gate Avenue, San Francisco, CA, 94102. The purposes of the Fairness Hearing will be
5 to: (i) determine whether the proposed Settlement Agreement should be finally approved by the
6 Court as fair, reasonable, adequate, and in the best interests of the Settlement Class; (ii) determine
7 whether judgment should be entered pursuant to the Settlement Agreement, dismissing the Action
8 with prejudice and releasing all Released Claims; (iii) determine whether the Settlement Class
9 should be finally certified; (iv) rule on Settlement Class Counsel’s motion for attorneys’ fees,
10 costs, and service awards; (v) consider any properly filed objections; and (vi) consider any other
11 matters necessary in connection with the final approval of the Settlement Agreement.

12 30. By no later than fifteen days after the Notice Date, Plaintiffs and Settlement Class
13 Counsel shall file their: (a) motion for final approval of the Settlement Agreement, requesting
14 entry of the Final Order and Judgment, substantially in the form of Exhibit I to the Settlement
15 Agreement; and (b) motion for attorneys’ fees, costs, and service awards. Promptly after they are
16 filed, these document(s) shall be posted on the Settlement Website.

17 31. By no later than fourteen days before the Fairness Hearing, the Settlement
18 Administrator shall file with the Court (or provide to Settlement Class Counsel for filing with the
19 Court) copies of any objections received by the Settlement Administrator.

20 32. By no later than fourteen days before the Fairness Hearing, the Parties shall file
21 any responses to any Settlement Class Member objections and any replies in support of final
22 settlement approval and/or in support of Settlement Class Counsel’s motion for attorneys’ fees,
23 costs, and service awards.

24 33. The Court may, in its discretion, modify the date and/or time of the Fairness
25 Hearing, and may order that this hearing be held remotely or telephonically. In the event the
26 Court changes the date, time, and/or the format of the Fairness Hearing, the Parties shall ensure
27 that the updated information is posted on the Settlement Website.

28 34. Only Settlement Class Members who have submitted timely and valid objections,

1 in accordance with the requirements of this Preliminary Approval Order, may be heard at the
2 Fairness Hearing.

3 35. If the Settlement Agreement, including any amendment made in accordance
4 therewith, is not approved by the Court or shall not become effective for any reason whatsoever,
5 the Settlement Agreement and any actions taken or to be taken in connection therewith (including
6 this Preliminary Approval Order and any judgment entered herein), shall be terminated and shall
7 become null and void and of no further force and effect except for (i) any obligations to pay for
8 any expense incurred in connection with Notice and administration as set forth in the Settlement
9 Agreement, and (ii) any other obligations or provisions that are expressly designated in the
10 Settlement Agreement to survive the termination of the Settlement Agreement.

11 36. Other than such proceedings as may be necessary to carry out the terms and
12 conditions of the Settlement Agreement, all proceedings in the Action are hereby stayed and
13 suspended until further order of this Court.

14 37. Pending final determination of whether the Settlement Agreement should be
15 finally approved, Plaintiffs and all Settlement Class Members are barred and enjoined from filing,
16 commencing, prosecuting, or enforcing any action against the Released Parties insofar as such
17 action asserts Released Claims, directly or indirectly, in any judicial, administrative, arbitral, or
18 other forum. This bar and injunction is necessary to protect and effectuate the Settlement
19 Agreement and this Preliminary Approval Order, and this Court's authority to effectuate the
20 Settlement, and is ordered in aid of this Court's jurisdiction.

21 38. This Preliminary Approval Order, the Settlement Agreement, and all negotiations,
22 statements, agreements, and proceedings relating to the Settlement, or any matters arising in
23 connection with settlement negotiations, proceedings, or agreements, shall not constitute, be
24 described as, construed as, offered or received against AT&T or the other Released Parties as
25 evidence or an admission of: (a) the truth of any fact alleged by Plaintiffs in the Action; (b) that
26 any person suffered compensable harm or is entitled to any relief with respect to the matters
27 asserted in this Action; (c) any liability, negligence, fault, or wrongdoing by AT&T or the
28 Released Parties, including any of its affiliates, agents, representatives, vendors, or any other

1 person or entity acting on its behalf; (d) that this Action or any other action was or may be
 2 properly certified as a class action for litigation, non-settlement purposes; (e) the arbitrability of
 3 the Action as to Plaintiffs and Settlement Class Members; or (f) the enforceability of any
 4 applicable contractual or statutory limitations period to limit any relief.

5 39. The Court retains jurisdiction over this Action to consider all further matters
 6 arising out of or connected with the Settlement, including enforcement of the Release provided
 7 for in the Settlement Agreement.

8 40. The Parties are directed to take all necessary and appropriate steps to establish the
 9 means necessary to implement the Settlement Agreement according to its terms should it be
 10 finally approved.

11 41. The Court may, for good cause, extend any of the deadlines set forth in this
 12 Preliminary Approval Order without further notice to Settlement Class Members. Without further
 13 order of the Court, the Parties may agree to make non-material modifications in implementing the
 14 Settlement that are not inconsistent with this Preliminary Approval Order.

15 42. The following chart summarizes the dates and deadlines set by this Preliminary
 16 Approval Order:

Last day for AT&T to provide the Customer Data to the Settlement Administrator	14 days after entry of Preliminary Approval Order
Notice Date	45 days after entry of Preliminary Approval Order
Last day for Plaintiffs and Settlement Class Counsel to file motion for final approval of the Settlement, and motion for attorneys' fees, costs and service awards	15 days after Notice Date
Exclusion/Objection Deadline	60 days after Notice Date
Last day for the Parties to file any responses to objections and any replies in support of motion for final settlement approval and/or Settlement Class Counsel's application for attorneys' fees, costs and service awards	14 days before Fairness Hearing
Claim Deadline	90 days after Notice Date
Fairness Hearing	[At least 135 days after entry of Preliminary Approval Order]

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IT IS SO ORDERED.

Date: June 16, 2022



Hon. Laurel Beeler
United States Magistrate Judge