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14
 15 UNITED STATES DISTRICT COURT
 16 NORTHERN DISTRICT OF CALIFORNIA
 17 SAN FRANCISCO DIVISION

18
 19 IAN VIANU, ELIZABETH BLUM, and
 20 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

**PLAINTIFFS' NOTICE OF MOTION
 AND MOTION FOR PRELIMINARY
 APPROVAL OF CLASS SETTLEMENT
 AND DIRECTION OF NOTICE UNDER
 RULE 23(E)**

Date: June 9, 2022
 Time: 9:30 a.m.
 Judge: Hon. Laurel Beeler

1 TO THE ABOVE-NAMED COURT AND TO THE PARTIES AND TO THEIR
2 ATTORNEYS OF RECORD:

3 PLEASE TAKE NOTICE that on June 9, 2022, at 9:30 a.m. at 450 Golden Gate Avenue,
4 Courtroom B, 15th Floor, San Francisco, CA, 94102, Plaintiffs Ian Vianu, Elizabeth Blum, and
5 Dominic Gutierrez (collectively, “Plaintiffs”) will and hereby do move the Court for an order
6 pursuant to Fed. R. Civ. P. 23(e)(1) granting Plaintiffs’ Motion for Preliminary Approval of Class
7 Settlement and for Direction of Notice Under Rule 23(e). Plaintiffs request that in such order the
8 Court do the following:

- 9 a. Grant preliminary approval of the parties’ proposed Class Settlement Agreement
10 (“Settlement”)¹;
- 11 b. Certify, for settlement purposes, the Settlement Class as defined in the Settlement,
12 pursuant to Fed. R. Civ. P. 23(a) and (b)(3);
- 13 c. Appoint Plaintiffs as Settlement Class Representatives representing the Settlement
14 Class;
- 15 d. Appoint Roger N. Heller, Michael W. Sobol, and Daniel E. Seltz of Loeff,
16 Cabraser, Heimann & Bernstein, LLP; and Daniel M. Hattis of Hattis & Lukacs as Settlement
17 Class Counsel;
- 18 e. Approve the proposed notice program in the Settlement, including the proposed
19 forms of notice, and direct that notice be disseminated pursuant to such notice program and Fed.
20 R. Civ. P. 23(e)(1);
- 21 f. Approve the proposed process set forth in the Settlement for Settlement Class
22 Members to submit claims;
- 23 g. Appoint Angeion Group, LLC (“Angeion Group”) as Settlement Administrator
24 and direct Angeion Group to carry out the duties and responsibilities of the Settlement
25 Administrator specified in the Settlement;
- 26 h. Set deadlines for Settlement Class Members to submit claims, request exclusion
27 from the Settlement Class, and object to the Settlement;

28 ¹ The Settlement is being filed herewith as Ex. 1 to the accompanying Declaration of Roger N. Heller (“Heller Decl.”).

1 i. Stay all non-Settlement-related proceedings in this lawsuit pending final approval
2 of the Settlement; and

3 j. Schedule a Fairness Hearing and certain other dates in connection with the final
4 approval of the Settlement pursuant to Fed. R. Civ. P. 23(e)(2).

5 This motion is based on this notice of motion and motion, the accompanying memorandum
6 of points and authorities, the Settlement including all exhibits thereto, the declarations of Roger N.
7 Heller, Daniel M. Hattis, and the Plaintiffs filed herewith, the declaration of Steven Weisbrot of
8 Angeion Group filed herewith, the argument of counsel, all papers and records on file in this matter,
9 and such other matters as the Court may consider.

10 Dated: May 10, 2022

Respectfully submitted,

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

By: /s/ Roger N. Heller

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

19
 20 IAN VIANU, ELIZABETH BLUM, and
 DOMINIC GUTIERREZ, on behalf of
 21 themselves and all others similarly situated,

22 Plaintiffs,

23 v.

24 AT&T MOBILITY LLC,
 25 Defendant.

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

**PLAINTIFFS' MEMORANDUM OF
 POINTS AND AUTHORITIES IN
 SUPPORT OF MOTION FOR
 PRELIMINARY APPROVAL OF CLASS
 SETTLEMENT AND DIRECTION OF
 NOTICE UNDER RULE 23(E)**

Date: June 9, 2022
 Time: 9:30 a.m.
 Judge: Hon. Laurel Beeler

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INTRODUCTION

1
2 After nearly three years of litigation, the parties have reached an agreement to settle this
3 case on a class basis. Pursuant to the terms of the Settlement,² Defendant AT&T Mobility LLC
4 (“AT&T”) will pay \$14 million to create a non-reversionary common Settlement Fund, from which
5 payments will be made to Settlement Class Members. All Settlement Class Members will be
6 eligible to submit simple claims for settlement payments. Payments to current customers will be
7 via automatic account credit, and payments to former customers will be via mailed check.

8 The Settlement presented for the Court’s consideration is fair, reasonable, and adequate, and
9 warrants preliminary approval under applicable standards. It is the product of hard-fought, arms-
10 length negotiations between the parties through an experienced and well-respected mediator, Robert
11 Meyer, Esq. of JAMS. It follows extensive formal discovery and years of hard-fought litigation,
12 including a litigated motion to dismiss and several motions regarding AT&T’s attempt to compel
13 individual arbitration and to stay the case. In negotiating the Settlement, the parties and their
14 counsel were well informed about the issues, the strengths and weaknesses of their respective
15 positions, and the risks faced by each side of continued litigation.

16 The Settlement also provides for a robust class notice program that includes direct notice to
17 all Settlement Class Members via a combination of email, mail, and text message (SMS); a tailored
18 social media notice program; reminder emails and reminder SMS notice; the establishment of a
19 dedicated Settlement Website where Settlement Class Members can obtain additional information
20 and submit claims online; and an informational Toll-Free Number. The proposed notice program
21 comports with Rule 23, due process, and best practices.

22 Plaintiffs and their undersigned counsel believe the Settlement to be in the best interests of
23 the Settlement Class Members and seek to begin the Court approval process that is required for all
24 class action settlements. Plaintiffs therefore respectfully request that the Court preliminarily
25 approve the Settlement, certify the Settlement Class for settlement purposes, direct that notice be
26 disseminated to the Settlement Class pursuant to the proposed notice program, schedule a Fairness
27 Hearing, and grant the related relief requested herein.

28 _____
² The Settlement is being filed herewith as Ex. 1 to the accompanying Heller Decl.

BACKGROUND**I. Procedural History**

1
2
3 Plaintiffs filed this case on June 20, 2019, asserting claims on behalf of themselves and a
4 proposed class of California AT&T post-paid wireless customers who were charged an
5 Administrative Fee (“Admin Fee”) by AT&T. Plaintiffs alleged, generally, that AT&T’s
6 representations and advertisements regarding the monthly price of its post-paid wireless service
7 plans were misleading because the prices did not include the Admin Fee, and that AT&T
8 implemented and charged the Admin Fee in a deceptive and unfair manner. Dkt. 1. The parties
9 consented to have this Court conduct all proceedings in this action pursuant to 28 U.S.C. § 636(c).
10 Dkt. 7, 19.

11 On August 16, 2019 AT&T filed a motion compel individual arbitration of Plaintiffs’ claims
12 and to stay this action. Dkt. 20. Plaintiffs opposed that motion on September 12, 2019 and AT&T
13 filed its reply on October 3, 2019. Dkt. 30, 31. The Court held a hearing on AT&T’s arbitration
14 motion on October 31, 2019, after which the Court entered a tentative order denying AT&T’s
15 motion based on application of the *McGill* Rule and the non-severability clause in AT&T’s
16 arbitration provision—tentative pending the disposition of then-pending *en banc* petitions in the
17 *Tillage v. Comcast* and *McArdle v. AT&T* cases, in which the defendants/appellants were asking the
18 Ninth Circuit to invalidate the *McGill* Rule. Dkt. 42.

19 On March 2, 2020, after the *en banc* petitions in *Tillage/McArdle* were denied, the Court
20 entered an order denying AT&T’s arbitration motion. Dkt. 56. AT&T filed a notice of appeal of
21 the Court’s order denying arbitration on March 13, 2020. Dkt. 59. On March 2, 2020, AT&T filed
22 a motion to stay this case pending AT&T’s appeal to the Ninth Circuit in this case and pending
23 anticipated petitions for *certiorari* review in *Tillage/McArdle*. Dkt. 57. Plaintiffs opposed AT&T’s
24 motion to stay on March 11, 2020, and AT&T filed a reply on March 23, 2020. Dkt. 58, 66.

25 On March 23, 2020, AT&T filed a motion to dismiss this case pursuant to Fed. R. Civ. P.
26 12(b)(1) and 12(b)(6). Dkt. 67.

27 On April 9, 2020, following a hearing, the Court denied AT&T’s motion to stay pending
28 appeal and tabled AT&T’s request for a stay based on the *certiorari* petitions in *Tillage/McArdle* in

1 light of AT&T's pending motion to dismiss and the anticipated timing of a decision on the
2 *certiorari* petitions in *Tillage/McArdle*. Dkt. 72, 73.

3 Plaintiffs filed their opposition to AT&T's motion to dismiss on April 20, 2020, and AT&T
4 filed a reply on May 11, 2020. Dkt. 77, 79. The Court held a hearing on AT&T's motion to
5 dismiss on May 28, 2020. Dkt. 81. On June 11, 2020, the Court entered an Order denying in part
6 and granting in part AT&T's motion. Specifically, the Court denied AT&T's motion except that
7 the Court held that the discovery rule did not apply and that AT&T's conduct was not a continuing
8 violation. Dkt. 88.

9 In the meantime, on June 1, 2020 the United States Supreme Court denied the *certiorari*
10 petitions in *Tillage/McArdle*. Dkt. 84. On June 25, 2020, AT&T filed its Answer to the Complaint.
11 Dkt. 89. On August 17, 2020, AT&T voluntarily dismissed its appeal of this Court's order denying
12 arbitration. Dkt. 99.

13 On August 31, 2020, the Court entered a stipulated order incorporating a request for
14 damages under the Consumers Legal Remedies Act into the existing Complaint and incorporating a
15 denial of same into AT&T's existing Answer. Dkt. 101. On September 20, 2021, the Court entered
16 a stipulated order substituting in new Plaintiffs Elizabeth Blum and Dominic Gutierrez for one of
17 the original plaintiffs, Irina Bukchin, and permitting Plaintiffs to file an amended complaint. Dkt.
18 117. On September 21, 2021, Plaintiffs filed their operative First Amended Complaint. Dkt. 118
19 ("FAC"). On October 21, 2021, AT&T filed its Answer to the FAC. Dkt. 124.

20 On February 7, 2022, following the United States Supreme Court's grant of *certiorari* in
21 *Viking River Cruises, Inc. v. Moriana*, No. 20-1573 (U.S. cert. granted, Dec. 15, 2021) (involving
22 *Iskanian* Rule), AT&T filed a motion to stay this case pending the outcome in *Viking River* and also
23 filed a motion/renewed motion to compel individual arbitration of Plaintiffs' claims. Dkt. 137, 138.

24 On March 4, 2022, approximately three weeks before Plaintiffs were scheduled to file their
25 motion for class certification, the parties filed a joint notice of settlement. Dkt. 133, 140.

26 **II. Settlement Class Counsel's Investigation and Discovery**

27 The Settlement in this case was negotiated by counsel who were well-informed about the
28 issues and litigation risks as a result of their substantial investigation and discovery efforts. Prior to

1 filing suit, and continuing through the course of the litigation, proposed Settlement Class Counsel
2 conducted an extensive investigation into the factual and legal issues raised in this litigation. These
3 investigative efforts have included, *inter alia*, thoroughly investigating and analyzing AT&T's
4 advertising, customer disclosures, and purchase/sign-up processes; analyzing the practices of
5 AT&T's competitors; speaking with numerous AT&T wireless customers about their experiences;
6 and investigating customer complaints and other pertinent public information. Proposed Settlement
7 Class Counsel also extensively researched and analyzed the legal issues regarding the claims pled
8 and AT&T's defenses and potential defenses. Heller Decl., ¶ 19.

9 Moreover, proposed Settlement Class Counsel have conducted extensive formal discovery
10 in this case, including reviewing more than 60,000 pages of internal documents, marketing, and
11 other materials produced by AT&T; deposing five pertinent AT&T executives/employees,
12 including multiple Rule 30(b)(6) corporate designees; reviewing and analyzing customer data for a
13 sample of class member accounts; reviewing and analyzing aggregate class-wide fee and other data;
14 conducting third-party discovery of two accounting firms that assisted AT&T in connection with
15 the Admin Fee; propounding and analyzing responses to substantial written discovery; and
16 preparing responses to written discovery served by AT&T on Plaintiffs. Heller Decl., ¶ 20.

17 The parties were also informed by this Court's ruling on AT&T's motion to dismiss and by
18 the proceedings and rulings on AT&T's various arbitration and stay motions. Heller Decl., ¶¶ 9-18,
19 21.

20 **III. Settlement Negotiations**

21 The Settlement here is the product of hard-fought, arms-length negotiations. The parties
22 and their counsel participated in an initial, full-day mediation with mediator Eric Green of
23 Resolutions LLC on November 10, 2020. That first session did not result in a settlement. On
24 February 17, 2022, the Parties and their counsel engaged in a second, full-day mediation with
25 Robert Meyer, Esq. of JAMS, at which, after extensive arms-length negotiations, the Parties
26 reached an agreement in principle to resolve this case. The parties did not discuss the issue of
27 Settlement Class Counsel's fees and expenses as part of the negotiations (other than that any
28 amount awarded would be paid from the common settlement fund). Since reaching an agreement in

1 principle, the parties have worked diligently to draft the written settlement agreement, notices, and
 2 other settlement exhibits, and to select the proposed Settlement Administrator through a competitive
 3 bidding process. Heller Decl., ¶¶ 22-23.

SUMMARY OF THE SETTLEMENT TERMS

I. The Settlement Class

5 Plaintiffs seek certification under Rule 23(b)(3), for settlement purposes, of a “Settlement
 6 Class,” defined as:

7 All consumers residing in California (based on the accountholder’s
 8 last known billing address) with a post-paid wireless service plan
 9 from AT&T Mobility LLC through a Consumer or Individual
 10 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.

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

16 AT&T does not oppose certification of the Settlement Class, for settlement purposes only.

17 (Settlement §§ II.A.29, III)

18 Substantively, the Settlement Class definition tracks the proposed definition in the operative
 19 FAC (Dkt. 118 ¶ 103), with the only differences being: (1) it adds the specific start date to the class
 20 period based on the statute of limitations (i.e., four years before the initial Complaint was filed); (2)
 21 it adds an end date to the class period (the date of preliminary approval); (3) it clarifies that both
 22 consumer and IRU accounts are included;³ and (4) it provides that certain customers who have
 23 previously initiated separate disputes regarding the Admin Fee are excluded (i.e., they do not need
 24 to opt out to be excluded). According to AT&T’s records, there are approximately 5,425,000
 25 accounts in the Settlement Class. (Settlement, p. 10 at n. 1)

26 _____
 27 ³ IRU, or “individually responsibility users,” are consumers who receive AT&T post-paid wireless
 28 services pursuant to a group (e.g., employer) plan but who are responsible for paying the monthly
 bill themselves. By contrast, CRU, or “corporate responsibility users,” are persons who receive
 such services through a group plan but their employer is responsible for paying the monthly bill.
 CRU accounts are *not* included in the Settlement Class.

1 **II. The Settlement Fund**

2 Under the Settlement, AT&T will pay Fourteen Million Dollars (\$14,000,000.00) to
 3 establish a non-reversionary common Settlement Fund. As detailed below, the Settlement Fund
 4 will be used to pay: the settlement payments to Settlement Class Members; the costs of notice and
 5 other costs of the Settlement Administrator; and any attorneys' fees and expenses for Settlement
 6 Class Counsel and any Plaintiffs' service awards granted by the Court. (Settlement § IV)

7 **A. Payments to Settlement Class Members**

8 The entirety of the Net Distributable Funds—*i.e.*, the \$14 million Settlement Fund, less:
 9 Administrative Costs, Court-awarded attorneys' fees and expenses for Settlement Class Counsel,
 10 and any Plaintiffs' service awards—will be distributed to the Settlement Class. All Settlement
 11 Class Accounts will be eligible to submit a simple claim (electronically via the Settlement Website
 12 or by mail) to receive a settlement payment. All Settlement Class Accounts that submit a valid
 13 claim by the Claim Deadline (90 days after the Notice Date) will receive an equal share of the Net
 14 Distributable Funds. (Settlement § IV.C). Based on the estimated Administrative Costs, and
 15 assuming the Court awarded attorneys' fees equal to 25% of the common fund, Plaintiffs estimate
 16 the settlement payment amounts will be approximately \$15.00-\$29.00.

17 Payments to Settlement Class Members who are current AT&T customers will be via
 18 automatic credit to their AT&T accounts. Payments to Settlement Class Members who are former
 19 AT&T customers will be via mailed check, with appropriate steps taken to locate updated address
 20 information and re-issue checks that are returned undeliverable. (Settlement § IV.C.4)

21 Any residual funds remaining one year after checks are initially mailed—consisting of
 22 uncashed or undeliverable checks—will be treated as unclaimed property of the corresponding
 23 customers, subject to applicable state unclaimed property procedures. (Settlement § IV.C.5)⁴ In no

24 ⁴ Any additional administrative costs associated with this residual process will be paid from the
 25 residual funds, and will reduce *pro rata* the respective unclaimed property amounts for the
 26 Settlement Class Members with uncashed or undeliverable checks. (Settlement § IV.C.5) The
 27 unclaimed property process and timing vary by state. In California, where most Settlement Class
 28 Members are expected to reside, following a “dormancy period,” during which the funds would be
 claimable from the Settlement Administrator, and after a “due diligence” notice is sent to the
 individuals in question, the funds that remain unclaimed, along with the corresponding names,
 payment amounts, and last known addresses, would be sent to the California State Controller's
 Office for deposit in the State's general fund. At that point, the Settlement Class Members in
 question will still be able to claim the funds by following the state unclaimed property procedure;
 in California, there is no time limit for submitting such claims (*i.e.*, the funds would be available to

1 event will any funds revert to AT&T.

2 **B. Administrative Costs**

3 The fees and costs of the Settlement Administrator—in implementing the notice program,
4 administering the claims process, mailing checks, and performing the other administrative tasks
5 described in the Settlement—will be paid from the Settlement Fund. (Settlement §§ II.A.2, IV.A,
6 V)

7 The proposed Settlement Administrator, Angeion Group, was selected through a
8 competitive bidding process. Proposed Settlement Class Counsel received and analyzed bids from
9 four (4) very experienced administrators as part of this process. Heller Decl., ¶ 23. Angeion Group
10 is a well-known administration firm that has successfully administrated numerous class settlements
11 and judgments. Weisbrot Decl., ¶¶ 1-10, Ex. A. Angeion Group estimates that the Administrative
12 Costs in this case will be approximately \$813,000. *Id.*, ¶ 37. Plaintiffs believe such amount is
13 reasonable given the class size, the availability of contact information for the Settlement Class, the
14 claims process and benefits of multiple methods of notice, and in light of the total Settlement Fund
15 amount (i.e., \$14 million).

16 **C. Attorneys' Fees, Expenses, and Service Awards**

17 Settlement Class Counsel will apply to the Court for an award of reasonable attorneys' fees
18 in an amount not to exceed \$3.5 million (*i.e.*, 25% of the Settlement Fund), plus reimbursement of
19 litigation expenses. Settlement Class Counsel will also apply for services awards of up to \$3,500
20 for each Plaintiff, to compensate them for their efforts and commitment on behalf of the Settlement
21 Class. Settlement Class Counsel's fee application will be filed no later than 15 days after the Notice
22 Date (*i.e.*, at least 45 days before the Exclusion/Objection Deadline). Any attorneys' fees,
23 expenses, and service awards granted by the Court will be paid from the Settlement Fund.
24 (Settlement § XI)

25 **III. Notice Program**

26 The parties' proposed notice program is set forth in Section VI of the Settlement, and
27 consists of the following:
28

claim in perpetuity). *See* Cal. Code Civ. Proc. §§ 1501.5, 1531; <https://ucpi.sco.ca.gov/>.

1 **A. Direct Notice to Settlement Class Members**

2 Notice will be sent directly to all Settlement Class Members, through a combination of
3 email, first-class mail, and SMS (text message). No later than fourteen (14) days after entry of the
4 Preliminary Approval Order, AT&T will provide the Settlement Administrator with the Settlement
5 Class Member contact information and other Customer Data. (Settlement §§ II.A.10, VI.1) The
6 Settlement Administrator and AT&T will use that information to send notice, as described below.

7 *Email Notice:* By no later than 45 days after entry of the Preliminary Approval Order (the
8 “Notice Date”), the Settlement Administrator will email the email notice to every Settlement Class
9 account for which an email address is included in the Customer Data. The proposed form of the
10 email notice is attached as Ex. A to the Settlement. (Settlement § VI.2)

11 *SMS Notice:* By no later than the Notice Date, AT&T will send, via text message, the SMS
12 notice to the AT&T cellular telephone number(s) for each Settlement Class account for which
13 AT&T’s Customer Data identifies that both: (1) the account is a current AT&T account and (2) no
14 accountholders for the account have opted out of receiving such messages. Settlement Class
15 Members will receive both email and SMS notice if they meet the criteria for both.

16 The proposed form of the SMS notice is attached as Ex. D to the Settlement. Each SMS
17 notice will include a hyperlink to the substance of the email notice. SMS notice recipients will not
18 be charged for such messages. By no later than three days after sending the SMS notices, AT&T
19 will send the Settlement Administrator a list of Settlement Class accounts that were successfully
20 sent an SMS notice. (Settlement § VI.3)

21 *Mail Notice:* Postcard notice will be sent, via first class U.S. mail, postage pre-paid, to
22 Settlement Class accounts that do not receive email notice and/or SMS notice. The Settlement
23 Administrator will use the mailing addresses in the Customer Data, as updated through the National
24 Change of Address Database. The proposed form of the postcard notice is attached as Ex. B to the
25 Settlement. The Settlement Administrator will promptly re-mail any postcard notices returned
26 undeliverable with forwarding address information to the new address. For postcard notices
27 returned undeliverable without forwarding address information, the Settlement Administrator will
28 attempt an industry standard “skip trace” to identify updated address information and if successful

1 will re-mail postcard notices to the new address. (Settlement § VI.4)

2 *Reminder Email Notice:* By no later than 14 days after the Notice Date, the Settlement
3 Administrator will send a Reminder Email Notice, substantially in the form attached as Exhibit E to
4 the Settlement, to each Settlement Class Account that was sent the email notice. Depending on the
5 volume of Claim Form submissions and in consultation with the parties, prior to the Claim
6 Deadline, the Settlement Administrator may cause a second reminder email notice to be sent to
7 Settlement Class Accounts that were sent the Reminder Email Notice or to a portion of them that
8 have not yet submitted a Claim Form. (Settlement, § VI.9.a)

9 *Reminder SMS Notice:* Between 21 days and 14 days before the Claim Deadline, AT&T
10 will send via SMS a Reminder SMS Notice, substantially in the form attached as Exhibit F to the
11 Settlement, to the AT&T cellular telephone number(s) for each Settlement Class Account for which
12 the SMS notice was previously sent successfully and for which a Claim Form has not yet been
13 submitted for the account. (Settlement, § VI.9.b)

14 **B. Social Media Notice**

15 Starting no later than the Notice Date, the Settlement Administrator will also implement a
16 social media campaign to provide additional notice to Settlement Class Members, which will
17 include: (a) a custom Facebook/Instagram campaign whereby additional notice will provided
18 directly via Facebook/Instagram to Settlement Class Members with identifiable
19 Facebook/Instagram accounts; and (b) a supplemental interest-based Facebook and Instagram
20 campaign designed to target Settlement Class Members. (Settlement, § VI.8; Weisbrot Decl., ¶¶
21 23-30)

22 **C. Settlement Website and Toll-Free Number**

23 In addition, the Settlement Administrator will establish a Settlement Website
24 (www.ATTVianuClassActionSettlement.com), where Settlement Class Members can view the
25 Settlement, a long-form Website Notice (substantially in the form attached as Ex. C to the
26 Settlement), and other key case documents, and obtain further information about the Settlement and
27 their rights. Settlement Class Members will also be able to submit claims electronically via the
28 Settlement Website. The Settlement Website will be optimized for display on mobile phones. The

1 Settlement Administrator will also establish a Toll-Free Number where Settlement Class Members
 2 can obtain additional information and request that a hard copy claim form be mailed to them. The
 3 Settlement Website and Toll-Free number will be operational until at least one year after settlement
 4 payment checks are mailed. (Settlement §§ VI.5&6)

5 **D. CAFA Notice**

6 Within ten days of the filing of this motion, AT&T (or the Settlement Administrator at
 7 AT&T's direction) will serve a notice of the proposed Settlement, in accordance with 28 U.S.C
 8 § 1715, upon the appropriate State and Federal officials. (Settlement § VI.7)

9 **E. Claims Process**

10 Settlement Class Members may submit claims for settlement payments by submitting a
 11 claim form by the Claim Deadline (*i.e.*, within 90 days after the Notice Date). Claims may be
 12 submitted electronically via the Settlement Website, or by mail. The claim form is simple.
 13 (Settlement §§ IV.C.2; Ex. G (Claim Form))

14 The email/SMS notices will include hyperlinks to the Settlement Website where Settlement
 15 Class Members can submit online claims, and the mailed notices will prominently list the URL for
 16 the Settlement Website where they can submit online claims. The notices will also include unique
 17 Personal ID numbers to help facilitate submitting claims. (Settlement § IV.C.2, Ex. A-F)

18 **F. Opt-Out and Objection Procedures**

19 Any person within the Settlement Class definition may request to be excluded from the
 20 Settlement Class by mailing or emailing a request, including their contact information and stating
 21 their desire to be excluded, to the Settlement Administrator, emailed/postmarked by the deadline
 22 stated in the Notice.⁵ Any Settlement Class Member who does not submit a timely and valid
 23 exclusion request may object to the Settlement, Settlement Class Counsel's application for
 24 attorneys' fees and expenses, and/or the request for service awards. To be considered, an objection
 25 must be in writing, must be filed with or mailed to the Court, must be filed/postmarked by the

26 ⁵ If the person submitting the request for exclusion is doing so on behalf of a Settlement Class
 27 Member (such as an attorney or estate), the request must also include the full name of the person
 28 submitting the request and the basis of his, her or its authority to act on behalf of the Settlement
 Class Member. Any request for exclusion from a Settlement Class Member that is a co-
 accountholder on a Settlement Class Account must be submitted by all co-accountholders on that
 account. (Settlement § VII.A)

1 deadline stated in the notice, and must include the information proscribed by the Website Notice.
 2 The parties propose that the deadline for exclusion requests and objections (the
 3 “Exclusion/Objection Deadline”) be set sixty (60) days after the Notice Date. (Settlement §§ VII,
 4 VIII)

5 **IV. Release**

6 In exchange for the consideration provided under the Settlement, Settlement Class Members
 7 will release AT&T and its affiliates from any claims about the issues in this case. The scope of the
 8 release substantively tracks the scope of the operative FAC.⁶ (Settlement § IX)

9 **ARGUMENT**

10 **I. Overview of the Class Settlement Approval Process**

11 Pursuant to Rule 23(e), a class action settlement must be approved by the court before it can
 12 become effective. The process for court approval is comprised of two principal steps:

- 13 (1) Preliminary approval of the proposed settlement and direction of
 14 notice to the class; and
- 15 (2) A final approval hearing, at which argument concerning the
 16 fairness, adequacy, and reasonableness of the settlement is
 17 presented.

18 By this motion, Plaintiffs respectfully ask the Court to take the first step and enter an order
 19 preliminarily approving the Settlement and directing class notice, pursuant to the parties’ proposed
 20 notice program, under Rule 23(e)(1).

21 **II. The Proposed Settlement Meets the Standards for Preliminary Approval**

22 In evaluating a motion for preliminary settlement approval, the court conducts a preliminary
 23 assessment of the factors that will be evaluated at the final approval stage. Those factors include
 24 whether: (1) the class representatives and class counsel have adequately represented the class; (2)
 25 the proposed settlement was negotiated at arm’s length; (3) the relief provided is adequate under
 26 pertinent case circumstances; and (4) the settlement treats class members equitably relative to each
 27 other. Fed. R. Civ. P. 23(e)(2). The Court will grant preliminary approval and direct notice to the
 28 class if it finds it “is likely to approve the proposal under Rule 23(e)(2).” Fed. R. Civ. P. 23(e)(1).
 The ultimate touchstone for the analysis is whether the proposed settlement is “fair, reasonable, and

⁶ See Settlement § IX.B (claims “arising from or relating to the allegations in the Complaint or First Amended Complaint in this Action”); Dkt. 118 (FAC).

1 adequate.” *Id.*; see also *Zamora Jordan v. Nationstar Mortg., LLC*, 2019 WL 1966112, at *2 (E.D.
 2 Wash. May 2, 2019) (noting that “the factors in [the 2018] amended Rule 23(e)(2) generally
 3 encompass the list of relevant factors previously identified by the Ninth Circuit”).

4 In evaluating settlement approval, the Court should consider the strong public policy
 5 favoring “settlements, particularly where complex class action litigation is concerned.” *In re*
 6 *Syncor ERISA Litig.*, 516 F.3d 1095, 1101 (9th Cir. 2008); accord *Churchill Vill., L.L.C. v. Gen.*
 7 *Elec.*, 361 F.3d 566, 576 (9th Cir. 2004). The Settlement here readily meets all standards for
 8 preliminary settlement approval.

9 **A. The Settlement is the Product of Good Faith, Informed, Arm’s-Length
 10 Negotiations (Fed. R. Civ. P. 23(e)(2)(B))**

11 “Before approving a class action settlement, the district court must reach a reasoned
 12 judgment that the proposed agreement is not the product of fraud or overreaching by, or collusion
 13 among, the negotiating parties.” *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1290 (9th Cir.
 14 1992); see also Fed. R. Civ. P. 23(e)(2)(B). The Settlement submitted for the Court’s consideration
 15 here is the product of hard-fought, arms-length negotiations between the parties and their qualified
 16 and informed counsel. The parties participated in two full-day mediations with experienced and
 17 well-respected mediators, Eric Green of Resolutions LLC and Robert Meyer, Esq. of JAMS,
 18 respectively, and were able to reach an agreement on deal terms through those efforts. Over the
 19 past two-plus months, the parties have been working diligently to draft the written settlement
 20 agreement, prepare the forms of notice and other settlement exhibits, and select a proposed
 21 Settlement Administrator through a competitive bidding process. Heller Decl., ¶¶ 22-23.
 22 Throughout their negotiations, the parties were represented by counsel experienced in the
 23 prosecution, defense, and settlement of complex class actions.⁷

24 Moreover, as discussed above, the Settlement is informed by counsel’s substantial
 25 investigation and discovery regarding the legal and factual issues in the litigation, which included,
 26 *inter alia*, conducting a pre-filing factual investigation; reviewing and analyzing more than 60,000
 27 pages of internal documents, marketing, and other materials produced by AT&T, customer data for
 28 a sample of accounts, and substantial aggregate class-wide data; deposing five AT&T

⁷ Heller Decl., ¶¶ 3-8, Ex. B; Hattis Decl., ¶¶ 4-6.

1 employees/executives involved in the Admin Fee, including multiple Rule 30(b)(6) corporate
 2 designees; conducting third-party discovery of two accounting firms that assisted AT&T regarding
 3 the Admin Fee; substantial written discovery; and ongoing communications with class members.
 4 *See supra* Background § II. Further, as the Court is aware, there was significant motion practice in
 5 this case, including a litigated motion to dismiss and several arbitration/stay-related motions.
 6 Moreover, Plaintiffs were preparing their class certification motion, which was scheduled to be filed
 7 on March 23, 2022, at the time the parties reached an agreement in principle. In negotiating the
 8 Settlement, the parties and their counsel were informed by their work in briefing these issues and,
 9 of course, by the various court rulings.

10 **B. Plaintiffs and Settlement Class Counsel Have and Continue to Zealously**
 11 **Represent the Class (Fed. R. Civ. P. 23(e)(2)(A))**

12 Plaintiffs and proposed Settlement Class Counsel have prosecuted this action on behalf of
 13 the Settlement Class with vigor and dedication for nearly three years. *See* Fed. R. Civ. P.
 14 23(e)(2)(A). As discussed above and in the attached declarations, Settlement Class Counsel have
 15 thoroughly investigated and researched the factual and legal issues involved, conducted substantial
 16 discovery, and engaged in extensive motions practice, and engaged and worked with experts, all in
 17 furtherance of prosecuting the claims here. *See supra* Background § II. Likewise, Plaintiffs have
 18 personally been actively engaged—they each provided pertinent information about their
 19 experiences and accounts, searched for and provided documents and information in response to
 20 AT&T's written discovery requests, and regularly communicated with their counsel up to and
 including evaluating and approving the proposed Settlement.⁸

21 **C. The Settlement Represents a Strong Result for the Settlement Class,**
 22 **Particularly Given the Risks and Likely Duration of Ongoing Litigation**
 23 **(Fed. R. Civ. P. 23(e)(2)(C))**

24 The Settlement provides substantial monetary relief—a \$14 million non-reversionary fund.
 25 Based on estimated Administrative Costs, and assuming the Court awarded attorneys' fees equal to
 26 25% of the common fund, Plaintiffs estimate that the settlement payments for claimants will be
 approximately \$15.00-\$29.00.⁹ That amount represents a strong result given the potential recovery

27 ⁸ Vianu Decl., ¶¶ 5-7; Blum Decl., ¶¶ 5-7; Gutierrez Decl., ¶¶ 5-7.

28 ⁹ The payment amount will depend in part on the claims rate. Claims rates can vary based on a
 number of factors. Plaintiffs are assuming a claims rate of between 6% and 12% for purposes of
 estimating the payment amount here.

1 and the substantial risks and delay of ongoing litigation in this case.

2 To put the estimated settlement payment amount in perspective, according to AT&T's
3 records, Settlement Class Accounts paid an average of approximately \$2.65 per month in Admin
4 Fee charges during the class period.¹⁰ The estimated \$15.00-\$29.00 payment amount thus
5 represents a refund of approximately 6-11 months of the average fees. As an additional point of
6 comparison, according to AT&T's records Settlement Class Accounts were charged on average a
7 *total* of approximately \$180.00 in Admin Fees *during the entire class period*. The estimated
8 \$15.00-\$29.00 payment amount thus represents a refund of approximately 8.3%-16.1% of the
9 average total fees paid during the class period.

10 To be sure, there are multiple ways to measure potential damages in this case, but the above
11 calculations provide useful perspective on the value and adequacy of the payment amount and the
12 Settlement in this case. The estimated payment amount represents a strong result for the Settlement
13 Class, particularly given the substantial risks, costs, and delay of continued litigation. Liability
14 remains very much disputed in this case. Among other arguments and defenses that AT&T has
15 asserted and/or indicated it will assert are: (a) AT&T adequately discloses the Admin Fee and true
16 cost of the service to customers and prospective customers; (b) Settlement Class Members were on
17 notice of the Admin Fee at least after it appeared on their initial bills and on each of their
18 subsequent monthly bills; (c) the Admin Fee is appropriate in amount, accurately explained, and
19 supported by AT&T's costs; and (d) AT&T's form terms of service permitted charging and
20 increasing the Admin Fee. AT&T also is expected to argue that, as a matter of equity, any
21 restitution here, if any, would need to be limited to the initial month(s) of Admin Fee charges for
22 each account given the fee's disclosure on the monthly bills. AT&T also disputes whether this case
23 can be manageably tried on a class basis. Further, while Plaintiffs have thus far been able to
24 overcome AT&T's efforts to compel arbitration, AT&T continues to pursue that path and, in fact,
25 recently moved to stay this case and filed a renewed arbitration motion after the U.S. Supreme
26 Court granted *certiorari* review in the *Viking River* case.

27 _____
28 ¹⁰ The monthly per-line Admin Fee amount changed three times during the class period, reaching its
current rate of \$1.99 per line per month in mid-2018. Some accounts have multiple lines on the
account.

1 While Plaintiffs believe that they can overcome AT&T's defenses and challenges, they are
 2 indicative of the risks, hurdles, and delays that Plaintiffs and the Settlement Class face should this
 3 matter proceed in litigation. The proposed Settlement provides considerable monetary relief for the
 4 Settlement Class while allowing them to avoid the risks of unfavorable, and in some cases
 5 dispositive, rulings on these and other issues. The Settlement also provides another important
 6 benefit—prompt relief. Continued litigation would likely add several more years before there is a
 7 resolution, given the remaining issues and likelihood of additional appeals.¹¹

8 **D. The Settlement Treats Class Members Equitably (Fed. R. Civ. P. 23(e)(2)(D))**

9 Under the Settlement, all Settlement Class Accounts are eligible to submit claims, and the
 10 settlement payment amounts will be equal for all claimants. (Settlement § IV.C). This allocation is
 11 fair, reasonable, and equitable. As discussed above, the estimated settlement payment amount
 12 represents a refund of approximately 6-11 months of fees. While Settlement Class Accounts
 13 incurred different amounts of total Admin Fees over the class period, all Settlement Class Accounts
 14 were subject to the same alleged deception and violation of their rights. Moreover, AT&T has
 15 argued that Settlement Class Members should be deemed on notice of the Admin Fee after the
 16 initial month(s) of the charge appearing on their bills and that as a matter of equity their restitution,
 17 if any, should be capped accordingly. While the parties disagree about this and other arguments,
 18 Plaintiffs and Settlement Class Counsel believe the Settlement's equal allocation of settlement
 19 funds is fair, reasonable, and equitable under the circumstances here.

20 Moreover, as discussed above, the claims process and claim form are simple and user-
 21 friendly. Claims can be submitted electronically via the Settlement Website, or by mail, and the
 22 individually-tailored direct notices will include the URL and hyperlinks to the Settlement Website
 23 where online claims can be submitted, as well as unique Personal ID numbers, to facilitate
 24 submitting claims. (Settlement § IV.C.2, Ex. G).

25
 26 ¹¹ The N.D. Cal. Guidelines for class settlements advise that parties seeking preliminary settlement
 27 approval should include certain information about a prior settlement in a similar case, for
 28 comparative purposes. Attached as Ex. 3 to the accompanying Heller Decl. is a chart comparing
 the proposed Settlement here and the settlement approved in *Roberts v. AT&T Mobility LLC*, N.D.
 Cal., Case No. 3:15-cv-03418-EMC, which involved the same defendant, a very similar notice
 program, and also included a very similar claims process as part of the settlement there.

1 **E. The Proposed Method of Distributing Relief Is Effective (Fed. R. Civ. P.**
 2 **23(e)(2)(C)(ii))**

3 The Settlement provides for an efficient and effective distribution of settlement payments.
 4 Payments to current customers will be via automatic account credits to their AT&T accounts.
 5 Payments to former customers will be via mailed checks, with appropriate steps taken to find
 6 updated address information and re-mail undeliverable checks as needed. (Settlement § IV.C.4.e-g)

7 **F. Settlement Class Counsel Will Seek Reasonable Attorneys' Fees and**
 8 **Reimbursement of Their Litigation Expenses (Fed. R. Civ. P. 23(e)(2)(C)(iii)).**

9 Settlement Class Counsel will move for an award of reasonable attorneys' fees and
 10 reimbursement of their litigation expenses. Fed. R. Civ. P. 23(e)(2)(C)(iii). Settlement Class
 11 Counsel currently anticipate requesting that the Court award 25% of the common Settlement Fund
 12 (*i.e.*, \$3.5 million) for attorneys' fees, plus reimbursement of litigation expenses. Settlement Class
 13 Counsel will file their fee application, which will provide the supporting basis for their request, at
 14 least 45 days in advance of the Exclusion/Objection Deadline, and it will be available on the
 15 Settlement Website after it is filed. As with the payments to Settlement Class Members, any
 16 attorneys' fees and expenses awarded by the Court will be paid from the Settlement Fund following
 17 the Effective Date of the Settlement. (Settlement § XI)

18 Based on their preliminary review, Settlement Class Counsel's total combined hours in this
 19 case through April 30, 2022 are approximately 4,484.9 hours, for a total combined lodestar of
 20 approximately \$2,632,977.50 during that period.¹² Settlement Class Counsel's total combined
 21 litigation expenses in this case through December 31, 2020 are approximately \$75,000.00.¹³ Based
 22 on the above numbers, a fee equal to 25% of the Settlement Fund would represent a 1.329
 23 multiplier on Settlement Class Counsels' approximate lodestar through April 30, 2022. Settlement
 24 Class Counsel will continue to incur time in seeking settlement approval and on implementation
 25 efforts should the Settlement be approved, will continue to review their respective records, and will
 26 provide updated information regarding the time and expenses for which compensation is sought,
 27 and additional detail regarding the work they performed and their expenses, in their fee
 28 application.¹⁴

¹² Heller Decl., ¶¶ 24-25; Hattis Decl., ¶¶ 7-8.

¹³ Heller Decl., ¶ 25.

¹⁴ Finally, there are no agreements between the parties other than the Settlement. *See Fed. R. Civ.*

1 **III. The Court Should Provisionally Certify the Settlement Class**

2 When a settlement is reached before certification, a court must determine whether to certify
 3 the settlement class. *See, e.g., Manual for Compl. Litig.*, § 21.632 (4th ed. 2014); *Amchem Prods.,*
 4 *Inc. v. Windsor*, 521 U.S. 591, 613-14 (1997). Class certification is warranted when the
 5 requirements of Rule 23(a) and at least one subsection of Rule 23(b) are satisfied. Certification of
 6 the Settlement Class is warranted here.

7 **A. The Requirements of Rule 23(a) are Satisfied**

8 **1. Numerosity (Rule 23(a)(1))**

9 Rule 23(a)(1) requires that “the class is so numerous that joinder of all members is
 10 impracticable.” Fed. R. Civ. P. 23(a)(1). A “class of 41 or more is usually sufficiently numerous.”
 11 *5 Moore’s Federal Practice—Civil* § 23.22 (2016); *see also Hernandez v. Cty. of Monterey*, 305
 12 F.R.D. 132, 153 (N.D. Cal. 2015). Numerosity is easily satisfied here. According to AT&T’s
 13 records, the Settlement Class, as defined, includes approximately 5,425,000 accounts.

14 **2. Commonality (Rule 23(a)(2))**

15 Rule 23(a)(2) requires that there be one or more questions common to the class.
 16 Commonality “does not turn on the number of common questions, but on their relevance to the
 17 factual and legal issues at the core of the purported class’ claims.” *Jimenez v. Allstate Ins. Co.*, 765
 18 F.3d 1161, 1165 (9th Cir. 2014). “Even a single question of law or fact common to the members of
 19 the class will satisfy the commonality requirement.” *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338,
 20 369 (2011). This case raises multiple common questions, including whether AT&T’s alleged
 21 omissions were material, whether AT&T’s characterization of the Admin Fee on the bills was
 22 accurate, and whether AT&T’s charging of the Admin Fee was unfair.

23 **3. Typicality (Rule 23(a)(3))**

24 Under Rule 23(a)(3), a plaintiff’s claims are “typical” if they are “reasonably coextensive
 25 with those of absent class members; they need not be substantially identical.” *Parsons v. Ryan*, 754
 26 F.3d 657, 685 (9th Cir. 2014) (citation omitted). “The test of typicality is whether other members
 27 have the same or similar injury, whether the action is based on conduct which is not unique to the
 28 named plaintiffs and whether other class members have been injured by the same course of

P. 23(e)(3) (“the parties seeking approval must file a statement identifying any agreement made in
 connection with the proposal”).

1 conduct.” *Hernandez*, 305 F.R.D. at 159 (citation and internal quotations omitted). Plaintiffs’
 2 claims and those of the Settlement Class are based on the same course of conduct and the same
 3 legal theories. Moreover, Plaintiff and the Settlement Class Members all suffered the same type of
 4 alleged harm—i.e., incurred Admin Fees.

5 **4. Adequacy of Representation (Rule 23(a)(4))**

6 Rule 23(a)(4)’s adequacy inquiry asks “(1) do the named plaintiffs and their counsel have
 7 any conflicts of interest with other class members and (2) will the named plaintiffs and their counsel
 8 prosecute the action vigorously on behalf of the class?” *Evon v. Law Offices of Sidney Mickell*, 688
 9 F.3d 1015, 1031 (9th Cir. 2012). Proposed Settlement Class Counsel have extensive experience
 10 litigating and resolving class actions, and are well qualified to represent the Settlement Class.¹⁵
 11 Since filing this case, Settlement Class Counsel have vigorously prosecuted this action on behalf of
 12 the Settlement Class, including, *inter alia*, substantial motions practice, conducting extensive
 13 investigation and discovery, engaging experts, participating in multiple mediations, and negotiating
 14 the proposed Settlement. They have and will continue to fairly and adequately protect the interests
 15 of the Settlement Class.¹⁶ Likewise, Plaintiffs have demonstrated their commitment to the
 16 Settlement Class, including by providing pertinent information about their experiences and
 17 accounts, searching for and providing documents and information in response to AT&T’s written
 18 discovery requests, regularly communicating with their counsel about the case, and reviewing and
 19 approving the proposed Settlement.¹⁷ Finally, Plaintiffs’ and Settlement Class Counsel’s interests
 20 are aligned with and not antagonistic to the interests of the Settlement Class. Plaintiffs and
 21 Settlement Class Members share an interest in obtaining relief from AT&T for the alleged
 22 violations.

23 **B. The Requirements of Rule 23(b)(3) Are Satisfied**

24 In addition to the requirements of Rule 23(a), at least one of the prongs of Rule 23(b) must
 25 be satisfied. Here, Plaintiffs seek certification under Rule 23(b)(3), which requires that “questions
 26 of law or fact common to class members predominate over any questions affecting only individual
 27 members, and that a class action is superior to other available methods for fairly and efficiently

28 ¹⁵ Heller Decl., ¶¶ 3-8, Ex. B; Hattis Decl., ¶¶ 4-6.

¹⁶ See *supra* Background §§ I-II.

¹⁷ Vianu Decl., ¶¶ 5-7; Blum Decl., ¶¶ 5-7; Gutierrez Decl., ¶¶ 5-7.

1 adjudicating the controversy.” Fed. R. Civ. P. 23(b)(3).

2 “The predominance inquiry ‘asks whether the common, aggregation-enabling, issues in the
3 case are more prevalent or important than the non-common, aggregation-defeating, individual
4 issues.’” *Tyson Foods, Inc. v. Bouaphakeo*, 136 S. Ct. 1036, 1045 (2016) (citation omitted)). At its
5 core, “[p]redominance is a question of efficiency.” *Butler v. Sears, Roebuck & Co.*, 702 F.3d 359,
6 362 (7th Cir. 2012). The Ninth Circuit favors class treatment of claims stemming from a “common
7 course of conduct,” like those alleged in this case. *See In re First All. Mortg. Co.*, 471 F.3d 977,
8 989 (9th Cir. 2006).

9 Common questions predominate. The Settlement Class Members’ claims all arise under the
10 same California laws and the same alleged course of conduct. The questions that predominate
11 include whether AT&T’s alleged omissions were material, whether AT&T’s characterization of the
12 Admin Fee on the bills was accurate, and whether AT&T’s charging of the Admin Fee was unfair.
13 Moreover, under the proposed Settlement, there will not need to be a class trial, meaning there are
14 no potential concerns about any individual issues, if any, creating trial inefficiencies. *See Amchem*
15 *Prods.*, 521 U.S. at 620 (“Confronted with a request for settlement-only class certification, a district
16 court need not inquire whether the case, if tried, would present intractable management
17 problems ... for the proposal is that there be no trial.”).

18 Fed. R. Civ. P. 23(b)(3)’s superiority inquiry calls for a comparative analysis of whether a
19 class action is “superior to other available methods for the fair and efficient adjudication of the
20 controversy.” *Id.* at 615; *see also Wolin v. Jaguar Land Rover N. Am., LLC*, 617 F.3d 1168, 1175
21 (9th Cir. 2010) (“[T]he purpose of the superiority requirement is to assure that the class action is the
22 most efficient and effective means of resolving the controversy.”). Class treatment is superior to
23 other methods for the resolution of this case, including from a judicial efficiency perspective and
24 given the relatively small amounts of alleged damages for each individual consumer. Moreover,
25 Settlement Class Members remain free to exclude themselves if they wish to do so.

26 **IV. The Proposed Notice Program Complies with Rule 23 and Due Process.**

27 Before a proposed class settlement may be finally approved, the Court “must direct notice in
28 a reasonable manner to all class members who would be bound by the proposal.” Fed. R. Civ. P.

1 23(e)(1)(B). Where certification of a Rule 23(b)(3) settlement class is sought, the notice must also
 2 comply with Rule 23(c)(2)(B), which requires:

3 the best notice that is practicable under the circumstances, including
 4 individual notice to all members who can be identified through
 5 reasonable effort. The notice may be by one or more of the
 6 following: United States mail, electronic means, or other
 7 appropriate means. The notice must clearly and concisely state in
 8 plain, easily understood language: (i) the nature of the action; (ii)
 9 the definition of the class certified; (iii) the class claims, issues, or
 10 defenses; (iv) that a class member may enter an appearance through
 11 an attorney if the member so desires; (v) that the court will exclude
 12 from the class any member who requests exclusion; (vi) the time
 13 and manner for requesting exclusion; and (vii) the binding effect of
 14 a class judgment on members under Rule 23(c)(3).

15 Fed. R. Civ. P. 23(c)(2)(B); *see also Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 176 (1974).

16 The proposed notice program here (Settlement § VI) meets all applicable standards. The
 17 notice program includes direct notice to all Settlement Class Members, via a combination of email,
 18 first class U.S. Mail, and SMS (text message); reminder email and SMS notices; a targeted social
 19 media notice campaign; the establishment of a Settlement Website where Settlement Class
 20 Members can submit claims online and view the Settlement, the long-form Website Notice, and
 21 other key case documents; and the establishment of a Toll-Free Number where Settlement Class
 22 Members can get additional information. Moreover, the proposed forms of notice (Settlement Ex.
 23 A-D) inform Settlement Class Members, in clear and concise terms, about the nature of this case,
 24 the Settlement, how to submit claims and the deadline to do so, and their other rights and options,
 25 including all of the information required by Rule 23(c)(2)(B). The Court should approve the
 26 proposed notice program.

27 **V. The Court Should Schedule a Fairness Hearing and Related Dates.**

28 The next steps in the settlement approval process are to notify Settlement Class Members
 of the proposed Settlement, allow Settlement Class Members an opportunity to exclude
 themselves or file comments or objections, and hold a Fairness Hearing. Towards those ends, the
 parties propose the following schedule:

Last day for AT&T to provide its Customer Data to the Settlement Administrator	14 days after entry of Preliminary Approval Order
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1	Notice Date	45 days after entry of Preliminary Approval Order
2	Last day for Plaintiffs and Settlement Class Counsel to file motion for final approval of the Settlement, and motion for attorneys' fees, expenses and service awards	15 days after Notice Date
3	Exclusion/Objection Deadline	60 days after Notice Date
4	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, expenses and service awards	14 days before Fairness Hearing
5	Claim Deadline	90 days after Notice Date
6	Fairness Hearing	[TBD]

CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court do the following:

- (a) Grant preliminary approval of the proposed Settlement;
- (b) Certify, for settlement purposes, the Settlement Class as defined in the Settlement, pursuant to Fed. R. Civ. P. 23(a) and (b)(3);
- (c) Appoint Plaintiffs as Settlement Class Representatives representing the Settlement Class;
- (d) Appoint Roger N. Heller, Michael W. Sobol, and Daniel E. Seltz of Lieff, Cabraser, Heimann & Bernstein, LLP; and Daniel M. Hattis of Hattis & Lukacs as Settlement Class Counsel;
- (e) Approve the proposed notice program in the Settlement, including the proposed forms of notice, and direct that notice be disseminated pursuant to such notice program and Fed. R. Civ. P. 23(e)(1);
- (f) Approve the proposed process set forth in the Settlement for Settlement Class Members to submit claims;
- (g) Appoint Angeion Group as Settlement Administrator and direct Angeion Group to carry out the duties and responsibilities of the Settlement Administrator specified in the Settlement;
- (h) Set deadlines for Settlement Class Members to request exclusion from the Settlement Class, to object to the Settlement, and to submit claims;
- (i) Stay all non-Settlement-related proceedings in this lawsuit pending final approval of the Settlement; and
- (j) Schedule a Fairness Hearing and certain other dates in connection with the final approval of the Settlement pursuant to Fed. R. Civ. P. 23(e)(2).

Dated: May 10, 2022

Respectfully submitted,

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