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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~~ FINAL ORDER AND
JUDGMENT

Judge: Hon. Laurel Beeler

1 This matter came before the Court for hearing on November 3, 2022, pursuant to the
2 Court’s Preliminary Approval Order dated June 16, 2022 (Dkt. 149, 149-1), and on the motion
3 (“Motion”) for final approval of the Settlement Agreement, dated May 10, 2022 entered into by
4 the Parties (the “Settlement Agreement”), as well as Settlement Class Counsel’s motion for an
5 award of attorneys’ fees, expenses, and service awards (Dkt. 153; “Fees and Costs Motion”). Due
6 and adequate notice having been given to the Settlement Class Members of the proposed
7 Settlement and the pending motions, as directed by the Court’s Preliminary Approval Order, and
8 upon consideration of all papers filed and proceedings had herein, and good cause appearing, the
9 Court hereby ORDERS as follows:

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

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

15 3. The “Settlement Class” for purposes of this Final Order and Judgment means:

16
17 All consumers residing in California (based on the accountholder’s last known
18 billing address) with a post-paid wireless service plan from AT&T Mobility LLC
19 through a Consumer or Individual Responsibility User (IRU) account and who
20 were charged an Administrative Fee on such account between June 20, 2015 and
21 June 16, 2022.

22 Excluded from the Settlement Class are any Judge presiding over this Action and
23 any members of their families; AT&T and affiliated entities and individuals and
24 their respective officers and directors; and any otherwise covered consumers, other
25 than Plaintiffs, who assert claims and seek relief in connection with the
26 Administrative Fee and who have provided AT&T with an unresolved written
27 Notice of Dispute (pursuant to AT&T’s contractual dispute resolution procedures)
28 before May 10, 2022. Also excluded from the Settlement Class are those persons
who submitted a timely and valid request for exclusion in accordance with the
procedures set forth in the Settlement Agreement and in this Court’s Preliminary
Approval Order.

4. The Court finds that the notice provisions set forth under the Class Action Fairness
Act, 28 U.S.C. § 1715, were complied with in this matter.

1 5. The Court finds that the Notice program for disseminating notice to the Settlement
2 Class, provided for in the Settlement Agreement and previously approved and directed by the
3 Court, has been implemented by the Settlement Administrator and the Parties. The Court finds
4 that such Notice program, including the approved forms of notice: (a) constituted the best notice
5 that is practicable under the circumstances; (b) included direct individual notice to all Settlement
6 Class Members who could be identified through reasonable effort, as well as supplemental notice
7 via a social media notice campaign and reminder notices; (c) constituted notice that was
8 reasonably calculated, under the circumstances, to apprise Settlement Class Members of the
9 nature of this Action, the definition of the Settlement Class certified, the class claims and issues,
10 the opportunity to enter an appearance through an attorney if the member so desires; the
11 opportunity, the time, and manner for requesting exclusion from the Settlement Class, and the
12 binding effect of a class judgment; (d) constituted due, adequate and sufficient notice to all
13 persons entitled to notice; and (e) met all applicable requirements of Federal Rule of Civil
14 Procedure 23, Due Process under the U.S. Constitution, and any other applicable law.

15 6. The Court hereby finds that all persons who fall within the definition of the
16 Settlement Class have been adequately provided with an opportunity to exclude themselves from
17 the Settlement Class by submitting a request for exclusion in conformance with the terms of the
18 Settlement Agreement and this Court's Preliminary Approval Order. All persons who submitted
19 timely and valid requests for exclusion are not bound by this Final Order and Judgment. A list of
20 those persons who submitted timely and valid requests for exclusion is on file at Dkt. 159-1. All
21 other persons who fall within the definition of the Settlement Class are Settlement Class Members
22 and part of the Settlement Class, and shall be bound by this Final Order and Judgment and the
23 Settlement Agreement.

24 7. The Court finds and reaffirms that this Action is properly maintained as a class
25 action, for settlement purposes only, pursuant to Fed. R. Civ. P. 23(a) and 23(b)(3), as set forth in
26 the Court's Preliminary Approval Order. The Court finds and reaffirms that, for settlement
27 purposes only, the Settlement Class, as defined above, meets the requirements for class
28 certification under Fed. R. Civ. P. 23(a) and 23(b)(3)—namely, that (1) the Settlement Class

1 Members are sufficiently numerous such that joinder is impracticable; (2) there are common
2 questions of law and fact; (3) Plaintiffs' claims are typical of those of the Settlement Class
3 Members; (4) Plaintiffs and Settlement Class Counsel have adequately represented, and will
4 continue to adequately represent, the interests of the Settlement Class Members; and (5) for
5 purposes of settlement only, the Settlement Class meets the predominance and superiority
6 requirements of Fed. R. Civ. P. 23(b)(3).

7 8. The Court reaffirms its appointment of Plaintiffs Ian Vianu, Elizabeth Blum, and
8 Dominic Gutierrez as Settlement Class Representatives to represent the Settlement Class, and
9 reaffirms its appointment of Settlement Class Counsel to represent the Settlement Class.

10 9. Because this settlement occurred before class certification, the Court has
11 considered comprehensively all Fed. R. Civ. P. Rule 23(e)(2) factors, applying elevated scrutiny
12 "to look for and scrutinize 'any subtle signs that class counsel may have allowed pursuit of their
13 own self-interests to infect the negotiations.'" *In re Apple Inc. Device Performance Litig.*, ---
14 F.4th ---, 2022 WL 4492078, at *9 (9th Cir. Sept. 28, 2022) (quoting *McKinney-Drobnis v.*
15 *Oreshack*, 16 F.4th 594, 607 (9th Cir. 2021)). These potential signs include whether class
16 counsel would "receive a disproportionate distribution of the settlement," whether "the parties
17 negotiate[d] a 'clear sailing' arrangement providing for the payment of attorneys' fees separate
18 and apart from class funds," and whether "the parties arrange[d] for fees not awarded to revert to
19 defendants rather than be added to the class fund." *In re Bluetooth Headset Prods. Liab. Litig.*,
20 654 F.3d 935, 947 (9th Cir. 2011) (quotation marks and citations omitted).

21 10. The Court finds that the Settlement Agreement warrants final approval pursuant to
22 Fed. R. Civ. P. 23(e)(2) as fair, reasonable, and adequate and in the best interest of the Settlement
23 Class, after weighing the relevant considerations. First, the Court finds that Plaintiffs and
24 Settlement Class Counsel have adequately represented the Settlement Class, and will continue to
25 do so through settlement implementation. Second, the proposed Settlement Agreement was
26 reached as a result of arms-length negotiations through an experienced mediator, Robert Meyer,
27 Esq. of JAMS, and comes after significant litigation, investigation, discovery, and a prior attempt
28 to negotiate a resolution through an experienced mediator. Third, the Court finds that the relief

1 proposed to be provided for the Settlement Class is fair, reasonable, and adequate, taking into
2 account, *inter alia*: (i) the costs, risks, and delay of trial and appeal for all Parties; (ii) the legal
3 issues presented in this Action; (iii) the interests of Settlement Class Members; (iv) the
4 effectiveness of the proposed method of distributing relief to the Settlement Class (via direct
5 account credits and mailed checks); and (v) the terms of the requested award of attorneys' fees,
6 expenses, and service awards. Fourth, the Court finds that the Settlement Agreement treats
7 Settlement Class Members equitably relative to each other, and that the proposed allocation of
8 settlement funds to Settlement Class Members is reasonable and equitable. Under the terms of
9 the Settlement Agreement, all Settlement Class Members were eligible to submit a claim for an
10 equal payment via a simple claim process.

11 11. In granting final approval of the Settlement Agreement, the Court has also
12 considered each of the factors that courts in this Circuit consider in evaluating proposed class
13 settlements before class certification, which overlap considerably with the factors to be
14 considered under Fed. R. Civ. P. 23(e)(2). *See Roes 1-2 v. SFBSC Mgmt., LLC*, 944 F.3d 1035,
15 1048 & n.11 (9th Cir. 2019); *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 944 (9th
16 Cir. 2015) (citing the factors outlined in *Churchill Village LLC v. Gen. Elec. Corp.*, 361 F.3d 566,
17 575 (9th Cir. 2004)). The Court finds that those factors—including the strength of the plaintiffs'
18 case; the risk, expense, complexity, and likely duration of further litigation; the risk of
19 maintaining class action status throughout the trial; the amount offered in settlement; and the
20 extensive discovery that was conducted and the stage of the litigation when the settlement was
21 reached—support granting final approval of the Settlement Agreement.

22 12. Based on careful review of this pre-class certification settlement, the Court also
23 finds no evidence of collusion, self-dealing, or conflict infecting the settlement. The Settlement
24 Agreement does not contain a “clear sailing” provision or permit reversion. The Court also
25 finds—as discussed further below—that the amount of attorneys' fees and incentive payments
26 sought are reasonable and not disproportionate.

27 13. The Court further finds that the reaction of the Settlement Class Members supports
28 granting final approval of the Settlement Agreement. Following direct notice to the Settlement

1 Class Members, there were only two objections submitted and only 14 persons requested to be
2 excluded from the Settlement Class, while hundreds of thousands of claims for settlement
3 payments have been submitted.

4 14. The Court has fully considered both of the timely objections to the Settlement
5 Agreement (Dkts. 150, 156), and they are both overruled. Neither objection presents a valid basis
6 for denying approval of the Settlement Agreement. Among other things, neither objection
7 addresses or properly accounts for the risks, costs, and delays faced by the Settlement Class of
8 continued litigation, including in connection with class certification, the potential of a renewed
9 motion to compel individual arbitration, and in light of AT&T's defenses on the merits.
10 Moreover, one of the objections (Dkt. 156 at 2) misconstrues the release in the Settlement
11 Agreement.

12 15. The Motion is hereby GRANTED, and the Settlement Agreement and its terms are
13 hereby found to be and APPROVED as fair, reasonable, and adequate and in the best interest of
14 the Settlement Class. The Parties and Settlement Administrator are directed to consummate and
15 implement the Settlement Agreement in accordance with its terms, including distributing
16 settlement payments to the Settlement Class Members and other disbursements from the
17 Settlement Consideration as provided by the Settlement Agreement.

18 16. This Action is hereby dismissed with prejudice and without costs to any Party,
19 other than as specified in the Settlement Agreement, this Final Order and Judgment, and any
20 order(s) by this Court regarding Settlement Class Counsel's Fees and Costs Motion.

21 17. In consideration of the benefits provided under the Settlement Agreement, and for
22 other good and valuable consideration set forth in the Settlement Agreement, each of the
23 Settlement Class Members and Releasing Parties shall, by operation of this Final Order and
24 Judgment, have fully, finally, and forever released, relinquished, acquitted, and discharged all
25 Released Claims against all Released Parties in accordance with Section IX of the Settlement
26 Agreement, the terms of which section are incorporated herein by reference. The terms of the
27 Settlement Agreement, which are incorporated by reference into this Order, shall have res
28 judicata and other preclusive effects as to the Released Claims as against the Released Parties.

1 The Released Parties may file the Settlement Agreement and/or this Order in any other litigation
2 to support a defense or counterclaim based on principles of res judicata, collateral estoppel,
3 release, good-faith settlement, judgment bar or reduction, or any similar defense or counterclaim.

4 18. All Settlement Class Members and Releasing Parties have covenanted not to sue
5 any Released Party with respect to any Released Claim and shall be permanently barred and
6 enjoined from instituting, commencing, prosecuting, continuing, or asserting any Released Claim
7 against any Released Party. This permanent bar and injunction is necessary to protect and
8 effectuate the Settlement Agreement and this Order, and this Court's authority to effectuate the
9 Settlement, and is ordered in aid of this Court's jurisdiction and to protect its judgments.
10 Notwithstanding the foregoing, nothing in this Order and Judgment shall preclude an action to
11 enforce the terms of the Settlement Agreement.

12 19. Pursuant to the terms of the Settlement Agreement, Plaintiffs, Settlement Class
13 Counsel, AT&T, and AT&T's Counsel have, and shall be deemed to have, released each other
14 from any and all claims and requests for relief relating in any way to any Party or counsel's
15 conduct in this Action, including but not limited to any claims of abuse of process, malicious
16 prosecution, or any other claims or requests for relief arising out of the institution, prosecution,
17 assertion or resolution of this Action, including claims for attorneys' fees, costs of suit, or
18 sanctions of any kind except as otherwise expressly set forth in the Settlement Agreement.

19 20. This Final Judgment and Order is the final, appealable judgment in the Action as
20 to all Released Claims.

21 21. Without affecting the finality of this Final Order and Judgment in any way, this
22 Court retains jurisdiction over (a) implementation of the Settlement Agreement and the terms of
23 the Settlement Agreement; (b) Settlement Class Counsel's Fees and Costs Motion; (c) distribution
24 of the settlement consideration, Settlement Class Counsel attorneys' fees and expenses, and any
25 Plaintiff service awards; and (d) all other proceedings related to the implementation,
26 interpretation, validity, administration, consummation, and enforcement of the terms of the
27 Settlement Agreement. The time to appeal from this Final Order and Judgment shall commence
28 upon its entry.

1 22. In the event that the Settlement Agreement Effective Date does not occur, this
2 Final Order and Judgment shall be rendered null and void and shall be vacated, nunc pro tunc, as
3 set forth in the Court’s Preliminary Approval Order, except insofar as expressly provided to the
4 contrary in the Settlement Agreement, and without prejudice to the status quo ante rights of
5 Plaintiffs, Settlement Class Members, and AT&T.

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

19 24. The Court has also considered Plaintiffs’ and Settlement Class Counsel’s Fees and
20 Costs Motion. The Court finds that the amounts requested therein are reasonable and appropriate
21 under applicable standards and the circumstances of this Action, and hereby GRANTS the Fees
22 and Costs Motion.

23 25. The Court awards Settlement Class Counsel attorneys’ fees in the amount of
24 \$3,500,000.00, which is equal to 25% of the \$14,000,000 common Settlement Fund achieved in
25 this Action. That is equal to the “benchmark” for percentage-of-the-fund fee awards in this
26 Circuit. The Court finds that such fee is justified by the circumstances of this Action and
27 applicable standards. A lodestar “cross-check” further supports the reasonableness of the
28 requested fee amount. The Court finds that the hours reflected in Settlement Class Counsel’s

1 submitted lodestar of \$2,754,739.00 (as of August 2022) are reasonable under the circumstances
2 of this Action and that the hourly rates used in calculating such lodestar are reasonable and within
3 the range of rates for attorneys of comparable experience and qualifications in this District.

4 Based on the incurred lodestar as of August 2022, the fee requested represents, as of that time, a
5 multiplier of approximately 1.271 (the would-be multiplier is somewhat smaller now given the
6 additional time Settlement Class Counsel have spent on notice and claims implementation and
7 settlement approval efforts since August 2022), which the Court finds to be reasonable under the
8 circumstances of this Action—including the contingent nature of the fee and corresponding risk
9 that Settlement Class Counsel assumed in prosecuting this Action over three years and the result
10 achieved.

11 26. The Court also awards Settlement Class Counsel reimbursement of litigation
12 expenses in the requested amount of \$74,993.24. The Court finds that these expenditures were
13 reasonably incurred in the prosecution and resolution of this Action, are reasonable in amount,
14 and should be reimbursed.

15 27. The Court awards Plaintiffs service awards of \$3,500 each for their efforts on
16 behalf of the Settlement Class. Plaintiffs have actively participated in this litigation, providing
17 information about their experiences and their AT&T accounts for the complaint in this Action and
18 other filings, reviewing pleadings, and communicating regularly with Settlement Class Counsel
19 throughout the litigation and in evaluating and approving the Settlement. The Court finds that the
20 requested service awards are reasonable in amount and not disproportionate to the total
21 Settlement Fund. Three Plaintiffs will each receive \$3,500, which is within the range courts have
22 awarded in this Circuit. *See, e.g., Sandoval Ortega v. Aho Enters., Inc.*, No. 19-cv-00404-DMR,
23 2021 WL 5584761, at *12 (N.D. Cal. Nov. 30, 2021) (identifying \$5,000 as “the presumptively
24 reasonable incentive award in this district”); *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d at
25 947-48 (affirming an incentive award of \$5,000 for each of the nine class representatives); *In re*
26 *Lithium Ion Batteries Antitrust Litig.*, 853 F. App’x 56, 58 (9th Cir. Apr. 23, 2021) (affirming
27 service awards of \$10,000 for each named plaintiff). The service awards for all three Plaintiffs as
28 a whole comprise less than 0.075% of the total Settlement Fund, which is considerably less than

1 the proportion of incentive awards to total settlement funds courts in this Circuit have approved.
2 *See In re Online DVD-Rental Antitrust Litig.*, 779 F.3d at 947-98 (approving incentive awards
3 making up “a mere 0.17% of the total settlement fund”). The Court also finds that Plaintiffs were
4 not promised a service award for their participation in the Action, nor were their awards
5 conditioned upon their support of the Settlement Agreement (Dkt. 153-3 ¶ 11; Dkt. 153-4 ¶ 11;
6 Dkt. 153-5 ¶ 11). *See In re Lithium Ion Batteries Antitrust Litig.*, 853 F. App’x at 58 (approving
7 service awards “not conditioned on support of the settlement” and where a “service award
8 agreement prior to litigation” did not exist).

9 28. All attorneys’ fees, expenses, and service awards awarded herein shall be paid
10 from the common Settlement Fund, pursuant to the terms of the Settlement Agreement.

11 29. Pursuant to Fed. R. Civ. P. 54, the Court finds that there is no just reason for delay
12 and expressly directs this Final Order and Judgment and immediate entry by the Clerk of the
13 Court.

14 IT IS SO ORDERED.

15
16 Date: November 8, 2022



17
18 Hon. Laurel Beeler
United States Magistrate Judge