

CLASS ACTION SETTLEMENT AGREEMENT

This Class Action Settlement Agreement (“Agreement” or “Settlement Agreement,” as defined in Part II) is entered into between Plaintiff (as defined in Part II), on behalf of himself individually and on behalf of the Class (as defined in Part II), on the one hand, and Defendants (as defined in Part II), on the other hand, subject to the terms and conditions set forth below and the approval of the Court (as defined in Part II).

I. RECITALS

1.1. On February 10, 2009, Plaintiff through Class Counsel (as defined in Part II) filed a Class Action Complaint in San Francisco County Superior Court against Defendants alleging claims under the California Consumers Legal Remedies Act (“CLRA”, Civil Code § 1750, *et seq.*; the California False Advertising Law (“FAL”), California Business and Professions Code § 17500, *et seq.*; and California Unfair Competition Law (“UCL”), California Business and Professions Code § 17200 *et seq.*; and for fraud, deceit and/or misrepresentation; and seeking monetary relief, an injunction and other relief, alleging among other things that Defendants had improperly charged him and similarly situated persons international roaming fees for mobile telephone calls that the customer did not answer or place. Plaintiff sought to pursue these claims on behalf of himself and all California residents who were charged international roaming fees by Defendants for calls they did not answer or place.

1.2. On March 13, 2009, Defendants timely removed the Litigation to the United States District Court for the Northern District of California and subsequently answered the Complaint, denying Plaintiff’s allegations and asserting several affirmative defenses, including the defense that Plaintiff’s claims must be arbitrated per the terms of Plaintiff’s contract with AT&T. The Litigation was assigned to the Honorable Claudia Wilken.

1.3. On July 2, 2009, Plaintiff moved to strike the defense of failure to arbitrate and on July 30, 2009, Defendants cross-moved to compel arbitration.

1.4. On September 14, 2009, the District Court struck the affirmative defense of failure to arbitrate and denied the motion to compel arbitration on the ground that AT&T's arbitration provision was unconscionable under the rule enunciated in *Discover Bank v. Superior Court*, 36 Cal. 4th 148 (2005) ("*Discover Bank* rule").

1.5. Defendants filed an appeal on October 6, 2009. Meanwhile, Plaintiff filed a motion for class certification, on which the District Court deferred ruling, and the parties engaged in class and merits discovery. Plaintiff also filed a First Amended and Second Amended Complaint, which similarly challenged the disputed international roaming fees and asserted claims under the CLRA, FAL, UCL, and for fraud, deceit and/or misrepresentation.

1.6. While Defendants' appeal was pending, the United States Supreme Court ruled in *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333 (2011), that the *Discover Bank* rule was preempted by the Federal Arbitration Act.

1.7. After the Supreme Court issued its decision in *Concepcion*, the U.S. Court of Appeals for the Ninth Circuit reversed the District Court's order denying Defendants' motion to compel arbitration and remanded for further proceedings.

1.8. On remand, Defendants filed a renewed motion to compel arbitration, which the District Court granted, and the District Court stayed the action pending arbitration.

1.9. While the arbitration was pending, the California Supreme Court, in *McGill v. CitiBank, N.A.*, 2 Cal.5th 945 (Cal. 2017), granted a petition for review to assess the

enforceability under California law of contract terms that purport to waive the right to seek public injunctive relief under certain California consumer-protection statutes.

1.10. Plaintiff asked the arbitrator to stay the arbitration until the California Supreme Court decided *McGill*, but the arbitrator denied the request and held an in-person arbitration on June 27–28, 2016. After the arbitrator heard testimony from Plaintiff and Defendants’ witnesses, the arbitrator issued a decision on September 16, 2016 in favor of Defendants.

1.11. On December 16, 2016, Plaintiff timely moved to vacate the arbitral award, and on May 12, 2017, he moved for reconsideration of the District Court’s order granting AT&T’s motion to compel arbitration, based on the California Supreme Court’s intervening decision in *McGill*, which held that contracts purporting to waive the right to seek the California statutory remedy of public injunctive relief are unenforceable under California law. Defendants filed a cross-motion to confirm the arbitral award.

1.12. The District Court granted Plaintiff’s motion for reconsideration of the order compelling arbitration, determining that (a) *McGill* represented an intervening “change in controlling law”; (b) *McGill* was not preempted by the Federal Arbitration Act; (c) *McGill* forbade enforcement of the prohibition in AT&T’s arbitration provision of claims for public injunctive relief; (d) because the arbitration agreement provided that the public injunction ban could not be severed, the entire arbitration agreement was unenforceable; and (e) as a result, the arbitrator’s award was null and void. The Court denied as moot Plaintiff’s motion to vacate the arbitral award, and denied Defendants’ motion to confirm the arbitral award.

1.13. Defendants appealed to the Ninth Circuit from the order setting aside the arbitral award. While that appeal was pending, Plaintiff renewed his renewed motion for class certification in the District Court, which the District Court granted in part on August 13, 2018. AT&T petitioned the Ninth Circuit to appeal from the order of certification.

1.14. The Ninth Circuit denied the petition for permission to appeal from the order of class certification. In addition, after briefing and argument, the Ninth Circuit affirmed the District Court's order that AT&T's arbitration provision was unenforceable as to Plaintiff. AT&T petitioned the United States Supreme Court for a writ of certiorari from the Ninth Circuit's decision on the arbitration question, which was denied.

1.15. Plaintiff's Counsel and Defendants' Counsel have conducted a thorough examination and investigation of the facts and law relating to the matters in the Litigation. Such investigation and discovery included requesting and receiving written discovery responses, examining more than a million pages of Defendants' documents; retaining expert witnesses and reviewing their expert reports; conducting depositions, and participating in a two-day in-person arbitration.

1.16. Plaintiff's Counsel and Defendants' Counsel also participated in multiple efforts to resolve the litigation. On October 13, 2009, all parties participated in a full-day Early Neutral Evaluation under the auspices of this Court. On August 29, 2019 and April 14, 2020, the parties attended mediations with the Honorable Edward A. Infante (Retired) and subsequently had follow-up conversations to advance the mediation. On June 26, 2020, the parties further discussed resolution with the Honorable Magistrate Judge Sallie Kim, whom the District Court

appointed to conduct a settlement conference upon the most recent remand from the Ninth Circuit.

1.17. As a result of these efforts, the parties have reached the settlement memorialized in this Agreement. This Agreement was arrived at after extensive arm's length negotiations conducted in good faith by counsel for the Parties. The Parties did not discuss or negotiate Attorneys' Fees and Costs until after relief had been fashioned for the Settlement Class.

1.18. Defendants deny all of Plaintiff's Allegations and charges of wrongdoing or liability against them arising out of any of the conduct, statements, acts or omissions alleged, or that could have been alleged, in the Litigation. Defendants also deny that Plaintiff, the Class, or any Class Member, has suffered damage or harm by reason of any alleged conduct, statement, act or omission of Defendants. Defendants further deny that the evidence is sufficient to support a finding of liability on any of Plaintiff's claims in the Litigation.

1.19. Plaintiff's Counsel has analyzed and evaluated the merits of the Parties' contentions and this Settlement as it impacts all the Parties and the Class Members. Among the risks of continued litigation for Plaintiff are the risks of failing to prove liability or restitution and damages on a class-wide or individual basis. In particular, there may be difficulties establishing that statements or omission in Defendants' materials were likely to deceive reasonable consumers, and the amount of damages or restitution due to the Class or to any Class Member. Plaintiff and Plaintiff's Counsel, after taking into account the foregoing along with other risks and the costs of further litigation, are satisfied that the terms and conditions of this Agreement are fair, reasonable, adequate and equitable, and that a settlement of the Litigation and the prompt provision of effective relief to the Class are in the best interest of the Class Members.

1.20. Defendants agree that the Settlement is fair and reasonable in light of the merits and risks of the case. While continuing to deny all allegations of wrongdoing and disclaiming any liability with respect to any and all claims, Defendants nevertheless have chosen to enter into this Agreement in order to avoid further burden, expense, uncertainty, inconvenience, and interference with their ongoing business operations in defending the Litigation and put to rest the Released Claims.

1.21. This Agreement reflects a compromise between the Parties, and shall in no event be construed as or be deemed an admission or concession by any Party of the truth of any allegation or the validity of any purported claim or defense asserted in any of the pleadings in the Litigation, or of any fault on the part of Defendants, and all such Allegations are expressly denied. Nothing in this Agreement shall constitute an admission of liability or be used as evidence of liability, by or against any Party.

1.22. The undersigned Parties agree, subject to approval by the Court, that the Litigation between Plaintiff, on the one hand, and Defendants, on the other hand, shall be fully and finally compromised, settled and released on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the covenants and agreements set forth herein, and of the releases and dismissals of claims described below, the Parties agree to this Settlement, subject to Court approval, under the following terms and conditions.

II. DEFINITIONS

A. Capitalized terms in this Agreement shall be defined as follows:

2.1. "Account Credit" means a credit on the Class Member's mobile telephone account with AT&T, in a dollar amount equal to the full amount paid by the Class Member for

all one-minute incoming or outgoing calls billed at an international roaming rate during the Class Period, as shown in Defendants' billing table records, up to a maximum of \$50 per Class Member.

2.2. "Administration Costs" means the actual and direct costs reasonably charged by the Claim Administrator for its services as provided for in this Agreement or as otherwise agreed to by the Parties and the Claim Administrator or as ordered by the Court.

2.3. "Agreement," "Settlement Agreement," or "Settlement" means this Class Action Settlement Agreement, including all exhibits (numbered A through E).

2.4. "Allegations" means the allegations in the complaints filed in the Litigation, which are described in Section 1.1 above, as well as claims that could be pursued under the laws of the United States or any state on the basis of one or more of those allegations.

2.5. "Attorneys' Fees and Expenses" means such funds as may be awarded by the Court based on the Settlement described herein to compensate Plaintiff's Counsel as determined by the Court and described more particularly in Part VI of this Agreement.

2.6. "AT&T" means AT&T Mobility LLC.

2.7. "Cash Refund" means a check, payable to the Class Member, in a dollar amount equal to the full amount paid by the Class Member for all one-minute incoming or outgoing calls billed at an international roaming rate during the Class Period, as shown in AT&T's billing table records, up to a maximum of \$50 per Class Member.

2.8. "Claim" means a request for relief pursuant to this Settlement submitted on a Claim Form by a Class Member to the Claim Administrator in accordance with the terms of this Settlement.

2.9. “Claim Administrator” means KCC, an independent entity, which the Parties will ask the Court to appoint, to provide services in the administration of this Settlement, including providing Class Notice to the Class Members, the processing and evaluation of Claims, and the processing of other documents or tasks as provided for in this Agreement or as otherwise agreed to by the Parties or as ordered by the Court.

2.10. “Claim Filing Deadline” means sixty (60) days after the Notice Date.

2.11. “Claim Form” means a claim form in substantially the same form as Exhibit A.

2.12. “Claim Period” means the period beginning on the Notice Date and continuing until the Claim Filing Deadline.

2.13. “Class” or “Class Members” means all California residents who, any time between February 6, 2005 and January 31, 2009, were charged international roaming fees by Defendants for unanswered incoming calls to their U.S.-based mobile numbers. Excluded from the Class are (a) the Honorable Judges Claudia Wilken, Maria-Elena James (Ret.), Thomas S. Hixson, Sallie Kim and Edward Infante (Ret.) and any member of their immediate families; (b) any government entity; (c) any entity in which any Defendant has a controlling interest; (d) any of Defendants’ subsidiaries, parents, affiliates, and officers, directors, employees, legal representatives, heirs, successors, or assigns; (e) counsel for the Parties; and (f) any persons who timely opt-out of the Class

2.14. “Class Notice” means all types of notice that will be provided to Class Members pursuant to Federal Rule of Civil Procedure 23(c)(2) and 23(e), the Preliminary Approval Order, the Final Approval Order, and this Agreement.

2.15. “Class Period” means the period between February 6, 2005 and January 31, 2009.

2.16. “Class Representative” means Plaintiff Steven McArdle.

2.17. “Current Customer Class Member” means any Class Member who has an open mobile telephone account with AT&T at the time of Preliminary Approval.

2.18. “Court” means the United States District Court for the Northern District of California.

2.19. “Day Pass” means one day of free international roaming equivalent to AT&T international Day Pass as further described and subject to the terms and conditions posted at www.att.com/intldaypass ([except for the provisions regarding payment and automatic renewal, which is currently offered for sale by AT&T for as much as \\$10](#)). As described below in Sections 4.1(a) and 4.10(b)(1), the Day Pass shall be posted to the Current Customer Class Member’s active mobile telephone account, and shall be usable by that Class Member during that Class Member’s next trip abroad in which that Class Member uses AT&T service, and which shall not expire until at least 18 months after it is actually distributed to that Class Member.

2.20. “Defendants” means AT&T Mobility LLC, New Cingular Wireless PCS LLC, and New Cingular Wireless Services, Inc., collectively.

2.21. “Defendants’ Counsel” means the law firm of Mayer Brown LLP.

2.22. “Effective Date” means the latest of the following: (a) thirty-one (31) days after the entry of the Final Approval Order and Judgment if no objections are filed or if objections are filed and overruled and no appeal is taken from the Final Approval Order and Judgment; or (b) if a timely appeal is made, three (3) business days after the date of the the

issuance of the mandate from the Court of Appeals affirming the Final Approval Order and Judgment in all respects and that affirmance is no longer subject to further appeal or review.

2.23. “Email Notice” means a notice by email in substantially the same form as Exhibit B2.

2.24. “Final Approval Hearing” means the final hearing to be conducted by the Court on such date as the Court may order to determine the fairness, adequacy, and reasonableness of the Settlement in accordance with applicable jurisprudence, to be held after notice has been provided to Class Members in accordance with this Settlement, and where the Court will: (a) consider the merits of any objections to this Agreement and/or any aspect of the Settlement, (b) determine whether to grant Final Approval to the Settlement and enter the Final Approval Order and Judgment; (c) determine whether to approve an Incentive Award and in what amount; and (d) rule on Plaintiff’s Counsel’s application for Attorneys’ Fees and Expenses

2.25. “Final Approval” or “Final Approval Order” means an order, substantially in the form of Exhibit D, granting final approval of this Settlement (without material modification unless agreed upon by both Parties) as binding upon the Parties.

2.26. “Former Customer Class Member” means any Class Member who is a not a Current Customer Class Member.

2.27. “Incentive Award” means any award sought by application to and approval by the Court that is payable to Plaintiff to compensate him for his efforts in bringing this Litigation and/or achieving the benefits of this settlement on behalf of the Settlement Class, as further discussed in Part VIII.

2.28. “Judgment” means the final judgment dismissing the Litigation against Defendants with prejudice.

2.29. “Litigation” means *McArdle v. AT&T Mobility LLC, et al.*, United States District Court for the Northern District of California, Case No. 4:09-cv-01117-CW.

2.30. “Long Form Notice” means a notice in substantially the same form as Exhibit B1 that the Claim Administrator shall make available on the Settlement Website.

2.31. “Notice Date” means the day on which the Claim Administrator initiates the Notice Plan, which shall be no later than thirty (30) days following the date of Preliminary Approval.

2.32. “Notice Plan” means the procedure for providing notice to the Settlement Class, as set forth in Part V.

2.33. “Objection/Exclusion Deadline” means the deadline by which Class Members must submit objections to the Settlement or requests to be excluded from the Settlement, subject to the terms set forth in the Preliminary Approval Order, which is the date sixty (60) days after the Notice Date or such date otherwise ordered by the Court.

2.34. “Parties” means the Class Representative and Defendants, collectively.

2.35. “Party” means either the Class Representative or Defendants.

2.36. “Plaintiff” means Steven McArdle.

2.37. “Plaintiff’s Counsel,” or “Class Counsel” means the law firm of Gutride Safier LLP, which is counsel for the Class Representative.

2.38. “Postcard Notice” means a notice substantially in the form of Exhibit B3.

2.39. “Preliminary Approval” or “Preliminary Approval Order” means an order entered by the Court, substantially in the form of Exhibit C, preliminarily approving the terms and conditions of this Agreement and the Settlement without material modification unless agreed to by both Parties.

2.40. “Released Claims” means the claims released as set forth in Part 8 of this Agreement.

2.41. “Released Parties” include Defendants and each of their respective current and former parent companies, subsidiaries, affiliates, divisions, and current and former affiliated individuals and entities, legal successors, predecessors (including companies they have acquired, purchased, or absorbed), assigns, joint ventures, and each and all of their respective officers, partners, directors, owners, stockholders, servants, agents, shareholders, members, managers, principals, investment advisors, consultants, employees, representatives, attorneys, accountants, lenders, underwriters, benefits administrators, investors, funds, and insurers, past, present and future, and all persons acting under, by, through, or in concert with any of them.

2.42. “Settlement Benefit” means a Day Pass, Account Credit, or Cash Refund, as further described in Part IV of this Agreement.

2.43. “Settlement Website” means an internet website created and maintained by the Claim Administrator consistent with the entry of the Preliminary Approval Order to provide information regarding the Settlement and where Class Members can obtain information concerning requesting exclusion from or objecting to the Settlement and/or can submit a Claim. The URL of the Settlement Website shall be agreed to by the Parties.

2.44. “Undertaking” means an undertaking, substantially in the form of Exhibit E.

2.45. “Valid Claim” means a claim submitted in compliance with Part IV of this Agreement.

B. Conventions. All personal pronouns used in this Agreement, whether used in the masculine, feminine, or neuter gender, shall include all other genders and the singular shall include the plural and vice versa except where expressly provided to the contrary. All references herein to sections, paragraphs, and exhibits refer to sections, paragraphs, and exhibits of and to this Agreement, unless otherwise expressly stated in the reference. The headings and captions contained in this Agreement are inserted only as a matter of convenience and in no way define, limit, extend, or describe the scope of this Agreement or the intent of any provision thereof.

III. CHANGED PRACTICES

3.1. No later than 30 days after the Effective Date, Defendants shall change their business practices as follows:

(a) Text materially similar to the following (in italics) shall be added to the international roaming section of AT&T's Wireless Customer Agreement: "International roaming rates apply to incoming and outgoing calls messages and data use while you're located outside the United States, Puerto Rico, or the U.S. Virgin Islands. *In some countries, you may be charged international roaming rates even for calls that you do not answer.*"

(b) Defendants shall have the right to make revisions to the disclosures in Section 3.1(a) provided that the revised text is clear, accurate, complete, and non-misleading. Defendants shall also have the right to revise their wireless customer agreement in a manner that is consistent with any prospective changes to federal and California law. The right to make revisions includes the right to remove these disclosures if customers cannot be charged international roaming rates for calls that are not answered.

IV. SETTLEMENT BENEFITS

4.1. In full, complete, and final settlement and satisfaction of the Litigation and all Released Claims, and subject always to all of the terms, conditions, and provisions of this Agreement, including Court approval, Defendants agree to cause the following Settlement Benefits to be provided as follows:

(a) Automatic Day Pass for Current Customers. Each Current Customer Class Member with an active account shall receive a Day Pass, without the need to submit a Valid Claim. The use of the Day Pass is subject to the terms and conditions distributed to recipients on or before they redeem the Day Pass, which shall be materially the same as those currently available at www.att.com/intldaypass (except for the provisions regarding payment and automatic renewal). Current Customer Class Member who use a Day Pass are deemed to have accepted those terms and conditions.

(b) Claim Process for Current Customers To Obtain Account Credit In Lieu of Day Pass. In lieu of the Day Pass, each Current Customer Class Member may elect to receive an Account Credit by submitting a Valid Claim. If any Current Customer Class Member who submits a Valid Claim in order to elect an Account Credit ceases to have an open mobile telephone account with AT&T by the time Account Credits are actually distributed, he or she will receive a Cash Refund instead of an Account Credit. A Current Customer who fails to submit a Valid Claim and who no longer has an active mobile telephone account with Defendants by the time Day Passes are actually distributed (or who fails to use the Day Pass before its expiration) shall not be entitled to any further Settlement Benefit. If a Current

Customer Class Member submits a Claim Form that is untimely or otherwise deficient and does not constitute a Valid Claim, that Class Member will receive a Day Pass only.

(c) Claims Process for Former Customers. All Former Customer Class Members must submit a Valid Claim to obtain any Settlement Benefits. Former Customer Class Members who submit a Valid Claim shall receive a Cash Refund. Notwithstanding any other provision in this Agreement, any Former Customer Class Member who files a Valid Claim shall receive at least a Cash Refund of at least \$4.00.

4.2. In computing Account Credits and Cash Refunds, Defendants shall have no obligation to provide credits or refunds for any call charges that were previously refunded or waived.

4.3. Cash Refunds must be negotiated within 180 days of issuance or they shall be void and such unclaimed Cash Refunds shall be paid cy pres to the California State Bar Equal Access Fund.

4.4. If a Class Member does not timely submit a Valid Claim to the Claim Administrator, the Class Member is not entitled to any Settlement Benefit, except as provided in Section 4.1(a).

4.5. A Claim shall be deemed to be a Valid Claim only if submitted on the Claim Form pursuant to the procedures set forth in this Agreement. At the election of the Class Member, Claim Forms may be submitted in paper via first class mail to the Claim Administrator or online at the Settlement Website. Claim Forms that are mailed must be postmarked no later than the Claim Filing Deadline, and Claim Forms that are submitted online through the Settlement Website must be submitted no later than the Claim Filing Deadline. Claim Forms that are postmarked or submitted online after that date will not be Valid Claims.

4.6. On the Claim Form, the Class Member must certify the truth and accuracy of each of the following under the penalty of perjury, including by signing the Claim Form physically or by e-signature, or the Claim will not be considered a Valid Claim:

- (a) The Class Member's name and mailing address;
- (b) The Class Member's email address, if the Class Member elects to provide the information;
- (c) That the Class Member did not answer or place one or more of the one-minute calls that were billed at an international roaming rate during the Class Period; and
- (d) That the Class Member did not already receive a refund or credit for the charges for those calls.

4.7. Class Members shall not be required to specify which calls in particular (a) the Class Member did not answer or place or (b) were not previously refunded or credited.

4.8. Claims Review Process.

(a) Within ten (10) days after the Claim Filing Deadline, the Claim Administrator shall provide Defendants with an electronic list that includes the following information for each Class Member who timely submitted a Claim Form: (i) the Class Member's name; (ii) the mailing and email addresses provided by the Class Member on the Claim Form; (iii) whether the Class Member completed the attestation that he or she neither answered or placed one or more of the one-minute calls that were billed at an international roaming rate and did not already receive a refund or credit for the charges for those calls and (iv) the amount of Account Credit or Cash Refund due to such person. Upon request by Defendants' Counsel, the

Claim Administrator also shall promptly furnish Defendants with the Claim Forms submitted by Class Members.

(b) Defendants shall have the right to verify the accuracy of information submitted on Claim Forms by Class Members, either through Defendants' own records or through the Claim Administrator.

(c) Within ten (10) days after receiving the information from the Claim Administrator required by Section 4.8(a), Defendants shall provide the Claim Administrator with an electronic list of the names of the Class Members who, according to AT&T's records, incorrectly attested in their Claim Forms that they had not already received a refund or credit for the charges for one-minute calls billed at an international roaming rate. By the same deadline, Defendants provide the Claim Administrator with any dispute or alternate computations of the amount of the Account Credit or Cash Refund due to the persons identified by the Claim Administrator under Section 4.8(a).

(d) Every Claim Form that complies with the requirements of Sections 4.4 through 4.7 and is not determined to be invalid either pursuant to Section 4.8 or 5.2(l) shall be deemed to be a Valid Claim.

4.9. Within five (5) days after receiving the information from Defendants required by Section 4.8(c), the Claim Administrator shall provide Defendants with an updated electronic list containing the information set forth in Section 4.8(a), which shall incorporate any revisions that the Claim Administrator deems appropriate in light of the information provided by Defendants under Section 4.8(c).

4.10. Distribution of Settlement Benefits.

(a) Within thirty (30) days after the Effective Date, Defendants shall provide the Claim Administrator with an electronic list that includes the the identity of any persons reflected in the list provided by the Claim Administrator under section 4.9 who were Current Customer Class Members at the time they filed a Valid Claim but who no longer have an open mobile telephone account with AT&T. In addition, by that same deadline, Defendants shall provide the Claim Administrator with the funds to mail Cash Refunds to all such Class Members and to all Former Customer Class Members identified by the Claim Administrator pursuant to section 4.9 as having submitted a Valid Claim.

(b) The Settlement Benefits shall be delivered within sixty (60) days of the Effective Date.

(1) A Day Pass shall be deemed to be delivered to the Class Member on the date on which AT&T adds the Day Pass to that Class Member's active AT&T mobile telephone account. Once the Day Pass has been added, during the next 18 months, the next time the Class Member turns on his or her AT&T mobile telephone abroad and it registers on a foreign carrier's network on which the Day Pass can be used, the Class Member will receive a free text message notifying the Class Member of the free Day Pass, reminding the Class Member of the applicable terms and conditions (which the Class Member shall be permitted to view on his or her mobile device without occurring any foreign carrier data access charges), and asking the Class Member whether to redeem the Day Pass. The Class Member will be able to redeem the Day Pass by responding affirmatively to the text message. Upon the use of the free Day Pass, the Class Member will automatically revert to that Class Member's prior international rate plan; a statement to this effect shall also be contained in the free text message.

(2) An Account Credit shall be deemed to be delivered to the Class Member on the date on which AT&T adjusts the Class Member's balance to reflect the credit, regardless of the date on which the Class Member receives an invoice reflecting the Account Credit.

(3) A Cash Refund shall be deemed to be delivered to the Class Member on the date on which the Claim Administrator places the Cash Refund in the U.S. mail, regardless of the date on which the Class Member receives it.

(c) No Class Member shall have any Claim against Defendants, Defendants' Counsel, the Class Representative, Class Counsel, or the Claim Administrator based on the mailings, distributions, or process of awarding a Settlement Benefit made in accordance with this Agreement or any order of the Court.

(d) Each Class Member is solely responsible for any tax consequence, including but not limited to penalties and interest, relating to or arising out of the receipt of any benefit under this Settlement.

V. CLASS NOTICE AND SETTLEMENT ADMINISTRATION

5.1. Subject to Court approval, the Parties have agreed that providing Class Notice to the Class Members in the manner described herein is the best and most fair and reasonable notice practicable under the circumstances.

5.2. The Parties agree to the following procedures for giving notice of this Settlement to the Class Members:

(a) Within ten (10) days of entry of the Preliminary Approval Order or on such date otherwise ordered by the Court, Defendants shall search the billing table records for all of Defendants' mobile customers in California during the Class Period, and identify all

persons whom Defendants are able to locate with reasonable effort who AT&T's records reflect were charged for one or more one-minute calls (whether incoming or outgoing) at an international roaming rate during the Class Period. By the same deadline, Defendants shall provide the Claim Administrator with an electronic list that includes the following information with respect to each such Class Member for which Defendants have information: (i) first and last name; (ii) email address (if available); (iii) last known mailing address (if available); and (iv) the amounts charged to such Class Member for all one-minute calls billed at per-minute international roaming rates during the Class Period. Defendants agree to utilize reasonable efforts to provide accurate data to the Claim Administrator, which the Claim Administrator will rely upon in sending Class Notice and administering this Settlement as described herein and will provide a sworn declaration with the motion for Final Approval of the Settlement that Defendants utilized reasonable efforts to provide accurate data to the Claim Administrator (and a description of those efforts). The Claim Administrator shall use this electronic list to prepare the Email Notice and Postcard Notice, which shall inform the recipient Class Member whether the total amount of the Account Credit or Cash Refund that the Class Member would receive would be either (a) less than \$5, (b) between \$5 and \$9.99, (c) between \$10 and \$49.99, or (d) the maximum of \$50.

(b) No later than the Notice Date, the Claim Administrator shall send a copy of the Email Notice to those Class Members for whom an email address is available in Defendants' databases, or to an email address obtained by the Claim Administrator by cross-referencing the mailing address information from Defendants' databases to one or more third-party databases. In the case of Email Notice, such notice shall be sent to the Class Member at least three times, but if one or more of the emails is returned undeliverable, further Email Notice

shall not be required for that Class Member and instead Postcard Notice shall be sent by mail if a mailing address is reasonably available.

(c) No later than the Notice Date, the Claim Administrator shall send a copy of the Postcard Notice via First Class U.S. Mail to those Class Members for whom a physical mailing address is available but a valid email address is not available. The Claim Administrator shall utilize the national change of address database or other appropriate skip-tracing service that includes national change of address data to update the mailing list of the Class Members for whom a mailing address is available, prior to sending Postcard Notice.

(d) If no valid email or physical address for a Class Member is available to the Claim Administrator, the Claim Administrator shall perform a single skip trace using an industry accepted source obtain an address to allow Postcard Notice to be sent, and shall send the Postcard Notice to the mailing address identified by the skip tracing.

(e) Any mailed Postcard Notices returned to the Claim Administrator as undelivered and bearing a forwarding address shall be re-mailed by the Claim Administrator within five (5) business days following receipt of the returned mail. If no forwarding address is available, and a skiptrace has not previously been performed on the Class Member, the Claim Administrator shall perform a single skip trace using an industry-accepted source, to conduct an address update and send the Postcard Notices to the mailing addresses identified by the skip-tracing.

(f) No later than the Notice Date, the Claim Administrator also shall launch the Settlement Website and toll-free number to provide information to potential Class Members. The Settlement Website shall contain the Notice in both downloadable PDF format and HTML format with a clickable table of contents; answers to frequently asked questions; a

Contact Information page that includes the address for the Claim Administrator and addresses and telephone numbers for Plaintiff's Counsel; the Agreement; the signed order of Preliminary Approval; a downloadable version of the Claim Form; a downloadable and online version of the form by which persons may opt out of the Class; and (when it becomes available) Plaintiff's application for Attorneys' Fees and Expenses and Incentive Awards. The Settlement Website shall enable Class Members to submit Claims electronically, and the Settlement Website and toll-free number would provide information about submitting Claim Forms. The Notice and other documents referenced will be agreed upon by the Parties. The Settlement Website shall remain accessible until ninety (90) days after all Settlement Benefits are distributed.

(g) In the unanticipated event that the Claims Administrator determines that direct notice is insufficient to reach at least 70% of the identified potential Class Members, the Claims Administrator will employ additional notice designed to reach at least 70% of Class Members. The Parties agree to confer about and reach consensus concerning the manner of such additional notice.

(h) CAFA Notice. Within ten (10) days of entry of the Preliminary Approval Order, the Claim Administrator shall serve notice of this Settlement to appropriate state and federal officials pursuant to the Class Action Fairness Act, 28 U.S.C. § 1715. The Claim Administrator shall be responsible for drafting and preparing the notice in conformity with 28 U.S.C. § 1715 and for identifying the appropriate state and federal officials to be notified.

(i) The Claim Administrator shall provide any information or declaration requested by the Parties to assist with seeking Preliminary Approval and/or Final Approval.

(j) The Parties each represent that he or it does not and will not have any financial interest in the Claim Administrator ultimately appointed and otherwise will not have a relationship with the Claim Administrator ultimately appointed that could create a conflict of interest.

(k) The Parties acknowledge and agree that the Claim Administrator is not an agent of the Class Representative, Class Counsel, Defendants, or Defendants' Counsel and that the Claim Administrator is not authorized by this Agreement or otherwise to act on behalf of the Class Representative, Class Counsel, Defendants, or Defendants' Counsel.

(l) The Parties and the Claim Administrator shall have the right, but not the obligation, to audit Claims and, if any fraud is detected or suspected, to deny Claims or cross-examine or otherwise scrutinize any filed Claims. The final determination of whether a Claim is valid shall be the responsibility of the Claim Administrator, subject to the supervision of the Parties and ultimate oversight of the Court.

(m) If a Class Member requests that the Claim Administrator and/or its agent or employee refer him/her to Class Counsel, or if a Class Member requests advice beyond merely ministerial information regarding applicable deadlines or procedures for submitting a Claim Form or other Settlement-related forms for which the Claim Administrator does not have an approved response, then the Claim Administrator and/or its agent or employee shall promptly refer the inquiry to Class Counsel and Defendants' Counsel.

(n) The Parties shall supervise the Claim Administrator in the performance of the notice functions set forth in this Part.

(o) At the time the Parties apply for Preliminary Approval, the Claim Administrator shall provide a declaration to the Court to support the Parties' request for appointment of the Claim Administrator.

(p) At least fourteen (14) days prior to the Final Approval Hearing, the Claim Administrator shall certify to the Court that it has complied with the notice requirements set forth herein and shall provide a declaration containing the information required by Court's Procedural Guidance for Class Action Settlements regarding Post-Distribution Accounting regarding Class Members' Response.

(q) Defendants shall be responsible for paying all reasonable costs of notice as set forth in this Part and all costs of the Claim Administrator.

(r) Upon completion of the implementation and administration of the Settlement, the Claim Administrator shall provide a declaration for filing with the Court containing the post-distribution information identified in the Court's Procedural Guidance for Class Action Settlements regarding Post-Distribution Accounting.

VI. ATTORNEYS' FEES AND EXPENSES AND INCENTIVE AWARDS

6.1. Plaintiff's Counsel may make application to the Court for an award of Attorneys' Fees and Expenses as compensation for the time and effort undertaken in and risks of pursuing this Litigation, but agree that the Attorneys' Fees and Expenses Award shall not exceed Six Million One Hundred Thirty Thousand Dollars (\$6,130,000.00). Plaintiff's Counsel shall not be permitted to petition the Court for any additional payments for fees, costs or expenses from Defendants. The Attorneys' Fees and Expenses shall be for all claims for attorneys' fees, costs and expenses, past, present, and future incurred in the Litigation in connection with Claims against Defendants.

6.2. Defendants covenant and agree on behalf of themselves and the Released Parties that, provided Plaintiff's application for Attorneys' Fees and Expenses is consistent with Section 6.1, they and the Released Parties shall not (a) oppose or submit any evidence or argument challenging or undermining Plaintiff's application for Attorneys' Fees and Expenses; (b) encourage or assist any person to oppose or submit any evidence or argument challenging or undermining Plaintiff's application for Attorneys' Fees and Expenses; or (c) encourage or assist any person to appeal from an order awarding Attorneys' Fees and Expenses.

6.3. Any Attorneys' Fees and Expenses awarded by the Court which does not exceed the amount set forth in section 6.1 shall be paid by the Defendants to Class Counsel within ten (10) days after issuance of both Final Approval and of said order awarding Attorneys Fees and Expenses, provided that Plaintiff's Counsel provides an Undertaking, secured by assets that Defendants deem sufficient, to guarantee repayment of such amounts in the event that final approval or the award of fees and expenses is reversed or modified on appeal, substantially in the form of Exhibit E.

6.4. Payment of any Attorneys' Fees and Expenses to Plaintiff's Counsel shall constitute full satisfaction by Defendants of any claim to pay any amounts to any person, attorney or law firm for attorneys' fees, expenses, or costs in the Litigation incurred by any attorney on behalf of Plaintiff, the Class, or the Settlement Class, and shall relieve Defendants and Defendants' Counsel of any other claims or liability to any other attorney or law firm for any attorneys' fees, expenses, and/or costs to which any of them may claim to be entitled on behalf of Plaintiff, the Class, and/or the Settlement Class.

6.5. Any Attorneys' Fees and Expenses paid to Plaintiff and Plaintiff's Counsel under this Section shall be paid separate and apart from the Valid Claims and shall not take away from or otherwise reduce the monetary relief available to the Settlement Class.

6.6. Plaintiff may also apply to the Court for an Incentive Award in an amount not to exceed \$15,000.00, as compensation for his time and effort undertaken in and risks of pursuing this Litigation and of continuing to pursue the interests of the Class even after he was compelled to individual arbitration, including preparing for and participating in the Early Neutral Evaluation, providing written discovery responses and document production, sitting for deposition, attending and testifying at a two-day arbitration, participating in mediation, and supervising the work of Class Counsel for over eleven years.

6.7. The Incentive Award shall be the total obligation of Defendants to pay money to Plaintiff, in connection with the Litigation and this Settlement, other than amounts due to Plaintiff for any Valid Claim he submits pursuant to this Agreement.

6.8. Defendants covenant and agree on behalf of themselves and the Released Parties that, provided Plaintiff's application for an Incentive Award is consistent with Section 6.6, they and Released Parties shall not (a) oppose or submit any evidence or argument challenging or undermining Plaintiff's application for an Incentive Award; (b) encourage or assist any person to oppose or submit any evidence or argument challenging or undermining Plaintiff's application for an Incentive Award; or (c) encourage or assist any person to appeal from an order making an Incentive Award.

6.9. Any Incentive Award awarded by the Court which does not exceed the amount set forth in section 6.6 shall be paid by the Defendants to Plaintiff within ten (10) days of the Effective Date.

6.10. Plaintiff's Counsel and Plaintiff agree that the denial of, reduction or downward modification of, or failure to grant any application for Attorneys' Fees and Expenses or Incentive Award shall not constitute grounds for modification or termination of this Agreement, including the Settlement and releases provided for herein.

6.11. Except as set forth in this Agreement, each Party shall bear his or its own fees, costs, and expenses.

VII. CLASS SETTLEMENT PROCEDURES

7.1. Preliminary Approval. As soon as practicable after the signing of this Agreement, Plaintiff shall move, with the support of Defendants, solely for purposes of this Settlement, for a Preliminary Approval Order, substantially in the form of Exhibit C. The Parties shall seek to schedule a Final Approval Hearing to occur approximately one hundred thirty (130) days after the Preliminary Approval.

7.2. Exclusions and Objections. The Preliminary Approval Order and Class Notice shall advise prospective Class Members of their rights to exclude themselves from the Settlement, forgo the benefits of this Settlement, and reserve the right to pursue an individual action; to object to this settlement individually or through counsel; and to appear at the Final Approval Hearing.

(a) Exclusions. Class Members and persons purporting to act on their behalf who decide to be excluded from this Settlement must submit to the Claim Administrator a written statement requesting exclusion from the Settlement by the Objection/Exclusion Deadline or by such date otherwise ordered by the Court. Such written request for exclusion must (i) contain the name and address of the person requesting exclusion, (ii) be made by submitting the online form on the Settlement Website or by mailing a valid exclusion request by First Class

U.S. Mail to the Claim Administrator at the specified address as described in the Class Notice, (iii) include the statement that “I request to be excluded from the proposed class settlement in *McArdle v. AT&T Mobility LLC et al.*, No. 4:09-cv-01117-CW (N.D. Cal.); (iv) be signed by the person requesting exclusion; and (v) be submitted online or postmarked on or before the Objection/Exclusion Deadline in order to be valid. For exclusion requests that are submitted online, the Class Member shall have the opportunity to print a page immediately after submission showing the information entered and the date and time the request for exclusion was received. The Parties shall agree upon the look and content of the online request for exclusion form. Class Members shall be encouraged, but not required, to provide their email addresses in their requests for exclusion.

(b) Class Members who fail to submit a timely and valid written request for exclusion consistent with this Section shall be deemed to be a member of the Class and as such shall be bound by all terms of the Settlement and the Final Approval Order and Judgment if the Settlement is approved by the Court.

(c) A Class Member who is excluded from this Settlement shall not be bound by this Settlement or any Final Approval Order entered by the Court approving this Settlement, shall not be permitted to object to this Settlement, and shall not be entitled to receive any of the benefits of the Settlement.

(d) If a Class Member submits both a Claim Form and an exclusion request, the Claim Form shall take precedence and be considered valid and binding, and the exclusion request shall be deemed to have been sent by mistake and rejected.

(e) The Preliminary Approval Order shall provide that no person or entity shall purport to exercise any exclusion rights of any other person or entity, or purport to

exclude other Class Members as a group, aggregate, or class involving more than one Class Member, or as an agent or representative, including for any parents, subsidiaries, or affiliates of the Class Member submitting the request for exclusion. Any such purported exclusion shall be void, and any Class Members who are the subject of the purported opt-out shall be treated as Class Members for all purposes. Nothing in this provision shall bar a Class Member from retaining an attorney to exercise that Class Member's exclusion rights.

(f) Within three (3) business days following the Objection/Exclusion Deadline, the Claim Administrator shall provide in writing to Defendants' Counsel and Class Counsel the names of those Class Members who have requested exclusion from the Settlement in a valid and timely manner, and Plaintiff's Counsel shall file that list with the Court, with service on Defendants' Counsel.

(g) The Class Representative acknowledges and agrees that he will not exclude himself from this Settlement.

7.3. Objections. Class Members and persons purporting to act on their behalf who wish to object to the fairness, reasonableness, or adequacy of the Settlement or this Agreement, any request for Attorneys' Fees and Expenses, or any request for an Incentive Award shall submit a written notice of objection in accordance with the following procedures:

(a) Class Members who wish to object must submit a written statement of objection to the Class Action Clerk, United States District Court for the Northern District of California, postmarked or filed via the court's electronic filing system (ECF), on or before the Objection/Exclusion Deadline.

(b) To be valid, an Objection must include: (a) a reference to this case, *McArdle v AT&T Mobility LLC et al.*, Case No. 4:09-cv-01117-CW (N.D. Cal.), and the name of

the presiding judge, the Hon. Claudia Wilken; (b) the name, address, telephone number, and, if available, the email address of the Person objecting, and if represented by counsel, of his/her counsel; (c) a written statement of all grounds for the Objection, accompanied by any legal support for such Objection; (d) a statement of whether he/she intends to appear at the Final Approval Hearing, either with or without counsel; (e) a statement of his/her membership in the Class, including all information required by the Claim Form; and (f) a detailed list of any other objections submitted by the Class Member, or his/her counsel, to any class actions submitted in any court, whether state or otherwise, in the United States in the previous five (5) years. If the Class Member or his/her counsel has not objected to any other class action settlement in any court in the United States in the previous five (5) years, he/she shall affirmatively state so in the written materials provided in connection with the Objection to this Settlement. Failure to include this information and documentation may be grounds for overruling and rejecting the Objection. Any Class Member who fails to timely submit a written objection prior to the Objection/Exclusion Deadline shall be deemed to have waived his/her objections, and those objections will not be considered by the Court.

(c) Any objecting Class Member may appear, in person or by counsel, at the Final Approval Hearing to show cause why this Settlement and this Agreement should not be approved as fair, adequate, and reasonable or to object to any request for a Attorneys' Fees and Expenses or Incentive Award. To appear in person or by counsel at the Final Approval Hearing, the objecting Class Member must include in his or her objection a Notice of Intention to Appear. The Notice of Intention to Appear must include copies of any papers, exhibits, or other evidence that the objecting Class Member (or his/her counsel) will present to the Court in

connection with the Final Approval Hearing. Any Class Member who fails to submit a proper Notice of Intention to Appear will not be heard during the Final Approval Hearing.

(d) Any Class Member who submits a timely written request for exclusion from the Settlement shall not be permitted to object to the Settlement. Any written objection submitted by a Class Member who has submitted a timely written request for exclusion from the Settlement will not be heard during the Final Approval Hearing and the Class Member's objection(s) shall be waived and shall not be considered by the Court at the Final Approval Hearing.

(e) Any Class Member who submits a written objection in accordance with this Section shall be entitled to all of the benefits of the Settlement and this Agreement, provided the objecting Class Member complies with all the requirements set forth in this Agreement for submitting a timely and Valid Claim, and shall be bound by all terms of the Settlement and the Final Approval Order and Judgment if the Settlement is approved by the Court.

(f) Class Counsel shall serve on Defendants' Counsel and file with the Court any written objections to the Settlement received within fifteen (15) days following the Objection/Exclusion Deadline.

7.4. Final Approval and Judgment. After Preliminary Approval, Class Notice is provided to the Class Members, and the expiration of the Objection/Exclusion Deadline, a Final Approval Hearing shall be held on a date set by the Court. The Parties shall request that the Court enter the Final Approval Order, substantially in the form of Exhibit D.

7.5. Conditions Impacting Finality of Settlement.

(a) The Parties expressly agree that in the event of any of the following conditions: (i) the Court does not preliminarily approve the Settlement; (ii) the Court does not finally approve the Settlement; (iii) the Court does not enter the Final Approval Order and Judgment; (iv) the Court makes any material modification to the Settlement not agreed to by both Parties (including by conditioning the Preliminary Approval Order or Final Approval Order on any material change not agreed to by both Parties); (v) the Preliminary Approval Order or Final Approval Order is vacated, modified, or reversed, in whole or in part—except with respect to any rulings on any Attorneys’ Fees and Expenses or Incentive Award; and/or (vi) this Settlement does not become final for any reason; then this Agreement shall be null and void *ab initio* and any order entered by the Court in furtherance of this Settlement shall be treated as withdrawn or vacated by stipulation of the Parties (subject to Court approval) and Defendants shall have no further obligation under this Agreement; provided, however, that in the event of the denial of Preliminary Approval or Final Approval, the Class Representative and/or Defendants may seek appellate review through a writ or pursue any other available appellate remedy in support of the Settlement or this Agreement. Nothing herein is intended to restrict or limit the rights of either Defendants or the Class Representative to appeal any order of this Court in the event the Settlement is not finally approved for any reason. During the pendency of any appeal of the denial of Preliminary Approval or Final Approval, this Agreement shall remain valid and binding.

(b) If any of the conditions outlined in Section 7.5(a) occur such that this Settlement does not become final, the Parties shall proceed in all respects as if this Agreement had not been executed; provided, however, that Defendants shall be responsible for the payment of reasonable Administration Costs actually incurred for services already incurred

up to such time. Notwithstanding the foregoing, neither the denial of, an appeal of, a modification of, nor a reversal on appeal of any Attorneys' Fees and Expenses or Incentive Award shall constitute grounds for cancellation or termination of this Agreement.

(c) If Preliminary Approval is denied, the Parties shall be returned to their respective statuses as of the date immediately prior to the execution of this Agreement on the latest of the following events (i) the thirty-first (31st) day following the denial of Preliminary Approval; or (ii) the conclusion of any appeal or writ of mandamus from the denial of Preliminary Approval.

(d) If Final Approval is denied, the Parties shall be returned to their respective statuses as of the date immediately prior to the execution of this Agreement on the latest of the following events: (i) the thirty-first (31st) day following the denial of Final Approval; or (ii) the conclusion of any appeal or writ of mandamus from the denial of Final Approval.

7.6. Effect if Settlement Not Approved or Agreement is Terminated. This Agreement is entered into only for purposes of settlement. In the event that Preliminary Approval or Final Approval of this Agreement does not occur for any reason, including without limitation termination of this Agreement pursuant to Section 7.5, or if Final Approval is reversed on appeal, then no term or condition of this Agreement, or any draft thereof, or discussion, negotiation, documentation, or other part or aspect of the Parties' settlement discussions shall have any effect, nor shall any such matter be admissible in evidence for any purpose in the Litigation, or in any other proceeding; the Litigation may continue as if the Settlement had not occurred; and the Parties returned to their pre-Settlement litigation posture. The Parties agree that all drafts, discussions, negotiations, documentation or other information prepared in relation to

this Agreement, and the Parties' settlement discussions, shall be treated as strictly confidential and may not, absent a court order, be disclosed to any person other than the Parties' counsel, and only for purposes of the Litigation.

VIII. RELEASES

8.1. Releases Regarding Plaintiff and Released Parties. Upon Final Approval, Plaintiff (for purposes of this Part VIII, “Plaintiff” includes Plaintiff and his predecessors, successors, agents, assigns, attorneys and members of their families) on the one hand, and Defendants on the other hand, shall have unconditionally, completely, and irrevocably released and forever discharged each other from and shall be forever barred from instituting, maintaining, or prosecuting (1) any and all claims, liens, demands, actions, causes of action, rights, duties, obligations, damages or liabilities of any nature whatsoever, whether legal or equitable or otherwise, known or unknown, that actually were, or could have been, asserted in the Litigation, whether based upon any violation of any state or federal statute or common law or regulation or otherwise, or arise directly or indirectly out of, or in any way relate to, the Allegations, Claims, or contentions that Plaintiff, on the one hand, and Defendants, on the other hand, have had in the past, or now have, related to the Released Claims; and (2) any and all other claims, liens, demands, actions, causes of action, rights, duties, obligations, damages or liabilities of any nature whatsoever, whether legal or equitable or otherwise, known or unknown, that Plaintiff, on the one hand, and Defendants, on the other hand, have had in the past or now have, related in any manner to the Released Claims. Nothing in the foregoing shall release Plaintiff from any obligations to Defendants or other Released Parties under his contract for wireless service or any other product or service provided by Defendants or other Released Parties.

8.2. Releases Regarding Class Members and Released Parties. Upon Final Approval, Class Members, including any person claiming derivative rights of the Class Member as the Class Member’s parent, child, heir, guardian, associate, co-owner, attorney, agent, administrator, executor, devisee, predecessor, successor, assignee, assigns,

representative of any kind, shareholder, partner, director, employee or affiliate, shall have unconditionally, completely, and irrevocably released and discharged the Released Parties from any and all claims, liens, demands, actions, causes of action, rights, duties, obligations, damages or liabilities of any nature whatsoever, whether legal or equitable or otherwise, known or unknown, whether arising under any international, federal, state or local statute, ordinance, common law, regulation, principle of equity or otherwise, that were, or could have been, asserted in the Litigation and that arise out of or relate to international roaming charges incurred during the Class Period; or that could have been asserted in the Litigation regarding the Released Claims. Upon Final Approval, Settlement Class Members shall be forever barred from initiating, maintaining, or prosecuting any Released Claims against Released Parties.

8.3. Waiver of Provisions of California Civil Code Section 1542. The Plaintiff and Defendants shall, by operation of Final Approval and Judgment, be deemed to have waived the provisions, rights and benefits of California Civil Code Section 1542, and any similar law of any state or territory of the United States or principle of common law. In addition, Settlement Class Members shall, by operation of Final Approval and Judgment, be deemed to have waived the provisions, rights and benefits of California Civil Code Section 1542, and any similar law of any state or territory of the United States or principle of common law, but only with respect to the matters released as set forth Section 8.2 above. Section 1542 provides:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

The Parties and Class Members shall, by operation of the Final Approval Order and Judgment, be deemed to assume the risk that facts additional, different, or contrary to the facts which each

believes or understands to exist, may now exist or may be discovered after the release set forth in this Agreement becomes effective, and the Parties and Class Members shall, by operation of the Final Approval Order and Judgment, be deemed to have agreed that any such additional, different, or contrary facts shall in no way limit, waive, or reduce the foregoing releases, which shall remain in full force and effect.

8.4. Effectuation of Settlement. None of the above releases include releases of claims to enforce the terms of the Settlement provided for in this Agreement. This Agreement is the sole and exclusive remedy for any and all Released Claims.

8.5. Covenant Not To Sue. Plaintiff agrees and covenants not to sue any Released Party with respect to any of the Released Claims as set forth in section 8.1, or otherwise to assist others in doing so, and agree to be forever barred from doing so, in any court of law or equity, or any other forum. Each Class Member will be deemed to have agreed and covenanted not to sue any Released Party with respect to any of the Released Claims as set forth in section 8.2, and agree to be forever barred from doing so, in any court of law or equity, or any other forum.

8.6. No Admission of Liability. This Agreement reflects, among other things, the compromise and settlement of disputed claims among the Parties hereto, and neither this Agreement nor the releases given herein, nor any consideration therefor, nor any actions taken to carry out this Agreement are intended to be, nor may they be deemed or construed to be, an admission or concession of liability, or the validity of any claim, or defense, or of any point of fact or law (including but not limited to matters respecting class certification) on the part of any Party. Defendants expressly deny the Allegations. Neither this Agreement, nor the fact of settlement, nor the settlement proceedings, nor settlement negotiations, nor any related

document, shall be used as an admission of any fault or omission by the Released Parties, or be offered or received in evidence as an admission, concession, presumption, or inference of any wrongdoing by the Released Parties in any proceeding, except that this Agreement may be offered or received in evidence in such proceedings as may be necessary to consummate, interpret, or enforce this Agreement.

IX. ADDITIONAL PROVISIONS

9.1. No Collateral Attack. This Agreement shall not be subject to collateral attack by any Class Members or their representatives any time on or after the Effective Date. Prohibited collateral attacks shall include, but are not limited to, assertions that a Class Member's claim should have been heard or decided by another forum, that a Class Member's claim was improperly denied, that the payment to a Class Member was improperly calculated, or that a Class Member's request for exclusion was improperly denied.

9.2. Non-Disparagement. The Parties, Plaintiff's Counsel, and Defendants' Counsel agree that they will not make or cause to be made any statements that disparage Plaintiff, Defendants or their employees, or any of the other Released Parties. The Parties, Plaintiff's Counsel, and Defendants' Counsel also agree that they will not encourage any person to disparage Plaintiff, Defendants or their employees, or any of the other Released Parties. Disparagement includes, but is not limited to, statements made by any Internet posting or use of social media. Disparagement does not include statements that recite or refer to the Allegations of the Lawsuit or terms of the Agreement, nor does it include any good faith claim or allegation of a legal violation in the future.

9.3. Cooperation. All of the Parties, their successors and assigns, and their attorneys agree to work reasonably and cooperatively in order to obtain Court approval of this

Agreement and to effectuate the Settlement, and to provide declarations to facilitate the Court's Preliminary Approval and Final Approval of the Settlement. The Parties further agree to cooperate in the Settlement administration process and implementation of the Settlement and to make all reasonable efforts to control and minimize the costs and expenses incurred in the administration and implementation of the Settlement.

9.4. Change of Time Periods. The time periods and/or dates described in this Agreement with respect to the giving of notices and hearings are subject to approval and change by the Court or by the written agreement of Plaintiff's Counsel and Defendants' Counsel, without notice to Class Members.

9.5. Time for Compliance. If the date for performance of any act required by or under this Agreement falls on a Saturday, Sunday or court holiday, that act may be performed on the next business day with the same effect as if it had been performed on the day or within the period of time specified by or under this Agreement.

9.6. Governing Law. This Agreement is intended to and shall be governed by federal law and the laws of the State of California, without regard to conflicts of law principles.

9.7. Entire Agreement. The terms and conditions set forth in this Agreement and its exhibits constitute the complete and exclusive statement of the agreement between the Parties hereto relating to the subject matter of this Agreement, superseding all previous negotiations and understandings, and may not be contradicted by evidence of any prior or contemporaneous agreement. The Parties further intend that this Agreement constitute the complete and exclusive statement of its terms as between the Parties, and that no extrinsic evidence whatsoever may be introduced in any agency or judicial proceeding, if any, involving the interpretation of this Agreement. In executing this Agreement, the Parties acknowledge that

they have not relied upon any oral or written understandings, negotiations, agreements, statements, or promises that are not set forth in this Agreement. The Parties also acknowledge and agree that each has been represented by its own counsel with respect to the negotiating and drafting of this Settlement and this Agreement. All exhibits to this Agreement as set forth herein are integrated herein and are to be considered terms of this Agreement as if fully set forth herein.

9.8. Modifications. Any amendment or modification of the Agreement must be in writing signed by all of the Parties to this Agreement or their counsel. The Parties agree that nonmaterial amendments or modifications to this Agreement may be made in writing after Preliminary Approval without the need to seek the Court's approval. If the Court indicates, prior to Preliminary Approval or Final Approval, that the Settlement will not be approved unless certain changes are made, the Parties will attempt in good faith to reach an agreement as to any such changes prior to withdrawing from this Agreement. However, if no such agreement can be reached within thirty (30) days after the Court indicates that the Settlement will not be approved unless certain changes are made, then the Class Representative or Defendants may terminate and withdraw from this Agreement. Without further order of the Court, the Parties may agree in writing to reasonable extensions of time to carry out any of the provisions of this Agreement or the Preliminary Approval Order.

9.9. No Admissions. If this Agreement does not become effective or is cancelled, withdrawn, or terminated for any reason, it shall be deemed negotiation for settlement purposes only and will not be admissible in evidence or usable for any purposes whatsoever in the Litigation or any proceedings between the Parties or in any other action related to the Released Claims or otherwise involving the Parties or any Released Party. Nothing in this Agreement may be construed as, or may be used as, an admission by the Class Representative

that any of his claims are without merit. Nothing in this Agreement may constitute, may be construed as, or may be used as an admission by Defendants of any fault, wrongdoing, or liability whatsoever or that class certification is appropriate. Defendants continue to affirmatively deny all liability and all of the claims, contentions, Released Claims, and each and every allegation made by the Class Representative in the Litigation.

9.10. Advice of Counsel. The determination of the terms of, and the drafting of, this Agreement have been by mutual agreement after extensive arm's-length, bilateral negotiations, with consideration by and participation of all Parties and their counsel. The presumption found in California Civil Code section 1654 that uncertainties in a contract are interpreted against the party causing an uncertainty to exist is hereby waived by all Parties.

9.11. No Tax Advice. Neither Class Counsel nor Defendants' Counsel intends anything contained herein to constitute legal advice regarding the tax consequences of any amount paid hereunder nor shall it be relied upon as such.

9.12. Tax Forms. Notwithstanding anything else in this Agreement, Defendants shall have no obligation to pay any Attorneys' Fees and Expenses Award to Class Counsel or Incentive Award to Plaintiff unless both Class Counsel and Plaintiff have each provided AT&T with complete and correct IRS W-9 and CA-590 tax forms.

9.13. Conflicts. In the event of a conflict between this Agreement and any other document prepared pursuant to the Settlement, the terms of this Agreement supersede and control.

9.14. No Waiver. Any failure by any Party to insist upon the strict performance by any other Party of any provision of this Agreement shall not be deemed a waiver of any provision of this Agreement and such Party, notwithstanding such failure, shall have the right

thereafter to insist upon the specific performance of any and all of the provisions of this Agreement.

9.15. Warranties. Each signatory to this Agreement hereby warrants that he/it has the authority to execute this Agreement and thereby bind the respective Party. The Class Representative warrants and represents that he is the sole and lawful owner of all rights, title, and interest in and to all of the Released Claims and that he has not heretofore voluntarily, by operation of law or otherwise, sold, assigned, or transferred or purported to sell, assign, or transfer to any other person or entity any Released Claims or any part or portion thereof.

9.16. Binding Effect of the Agreement. This Agreement shall be valid and binding as to the Parties and their respective heirs, legal representatives, executors, administrators, successors, and assigns upon signing by all Parties.

9.17. Execution in Counterparts. This Agreement shall become effective upon its execution by all of the undersigned. The Parties may execute this Agreement in counterparts and/or by fax or electronic mail, and execution of counterparts shall have the same force and effect as if all Parties had signed the same instrument.

9.18. Enforcement of this Agreement. The Court shall retain jurisdiction to enforce, interpret, and implement this Agreement.

9.19. Notices. All notices to the Parties or counsel required by this Agreement, shall be made in writing and communicated by mail and fax or email to the following addresses:

If to Plaintiff or Plaintiff's Counsel:

Seth Safier, Esq.
Gutride Safier LLP
100 Pine Street, Suite 1250
San Francisco, CA 94111
Telephone: (415) 639-9090

Fax: (415) 449-6469
Email: att@gutridesafier.com

If to Defendants or Defendants' Counsel:

John Nadolenco
Mayer Brown LLP
350 S. Grand Avenue, 25th Floor
Los Angeles, CA 90071
Telephone : (213) 229-5173
Fax : (213) 625-0248
Email : jnadolenco@mayerbrown.com

9.20. Confidentiality.

(a) The Parties, Plaintiff's Counsel, and Defendants' Counsel agree to keep the existence and contents of the term sheet and Agreement confidential until the filing of the motion for Preliminary Approval. All other settlement communications shall remain confidential. This provision will not prevent the disclosure of the terms sheet or Agreement prior to the filing of the motion for Preliminary Approval with the Court to: (1) regulators, rating agencies, independent accountants, advisors, financial analysts, agents, existing or potential insurers or reinsurers, experts, courts, co-counsel, the Released Parties, any existing or potential investor of or any existing or potential lender to any of the Released Parties, (2) the Claims Administrator as may reasonably be required to effectuate the Settlement, and/or as otherwise required to comply with any applicable law or regulation; (3) any person or entity to whom the Parties agree in writing disclosure must be made to effectuate the Settlement; and/or (4) Defendants or any of the Released Parties as necessary for any reasonable commercial purpose.

(a) Nothing in this Agreement will be construed to prohibit communications between Defendants and any of the other Released Parties about the Settlement or any related topic.

(b) If contacted by a Class Member, Class Counsel and any Released Party may provide advice or assistance regarding any aspect of the Settlement requested by the Class Member. At no time shall any of the Parties or their counsel or their agents seek to solicit Class Members or any other persons to submit written objections to the Settlement, requests for exclusion from the Settlement; discourage Class Members from filing a Claim under the Settlement; or encourage Class Members or any persons to appeal from the Preliminary Approval Order and/or the Final Approval Order and Judgment. Except for the limitations on communications set forth in this Section 9.20(b), Released Parties may continue to communicate with Class Members in the regular and ordinary course of business.

(c) The Class Representative and Class Counsel agree that the discussions and the information exchanged in the course of negotiating this Settlement and Agreement are confidential and were made available on the condition that they not be disclosed to third parties (other than experts or consultants retained by the Class Counsel in connection with the Litigation), that they not be the subject of public comment, and that they not be publicly disclosed or used by the Class Representative or Class Counsel in any way in the Litigation should it not settle or in any other proceeding.

9.21. Confidential Documents. The parties reaffirm their obligation to comply with Stipulated Protective Order (Dkt. 57) regarding confidential information. Class Counsel are entitled to retain an archival copy of the entire file (paper and/or electronic), including all pleadings, motion papers, transcripts, legal memoranda, correspondence, discovery, expert reports and exhibits thereto, or attorney work product, even if such materials contain material designated as confidential, provided Class Counsel complies with all aspects of the Stipulated Protective Order (Dkt. 57).

9.22. Exhibits. The Exhibits to the Agreement are an integral part of the Settlement and are hereby incorporated and made part of the Agreement.

9.23. Complete Resolution. The Parties intend for this Agreement to be a complete and final resolution of all disputes between them with respect to the Litigation.

APPROVED AND AGREED:

10/27/2020

DATED: October ____, 2020

STEVEN MCARDLE

DocuSigned by:

Steve McArdle

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Steven McArdle

DATED: October ____, 2020

AT&T MOBILITY LLC
NEW CINGULAR WIRELESS PCS LLC
NEW CINGULAR WIRELESS SERVICES, INC.

Jennifer Van Buskirk
Senior Vice President—Wireless Marketing, AT&T
Mobility Services LLC

APPROVED AS TO FORM:

DATED: October ____, 2020

GUTRIDE SAFIER LLP

Adam Gutride, Esq.
Seth Safier, Esq.
Attorneys for Plaintiff

DATED: October ____, 2020

MAYER BROWN LLP

John Nadolenco, Esq.
Attorney for Defendant

APPROVED AND AGREED:

DATED: October __, 2020

STEVEN MCARDLE

Steven McArdle

DATED: October __, 2020

AT&T MOBILITY LLC
NEW CINGULAR WIRELESS PCS LLC
NEW CINGULAR WIRELESS SERVICES, INC.

Jennifer Van Buskirk
Senior Vice President—Wireless Marketing, AT&T
Mobility Services LLC

APPROVED AS TO FORM:

DATED: October ²⁷ __, 2020

GUTRIDE SAFIER LLP



Adam Gutride, Esq.
Seth Safier, Esq.
Attorneys for Plaintiff

DATED: October __, 2020

MAYER BROWN LLP

John Nadolenco, Esq.
Attorney for Defendant

APPROVED AND AGREED:

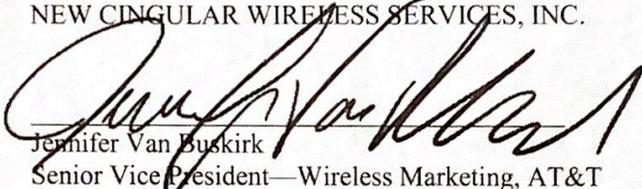
DATED: October __, 2020

STEVEN MCARDLE

Steven McArdle

DATED: October 28, 2020

AT&T MOBILITY LLC
NEW CINGULAR WIRELESS PCS LLC
NEW CINGULAR WIRELESS SERVICES, INC.



Jennifer Van Buskirk
Senior Vice President—Wireless Marketing, AT&T
Mobility Services LLC

APPROVED AS TO FORM:

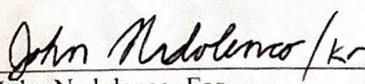
DATED: October __, 2020

GUTRIDE SAFIER LLP

Adam Gutride, Esq.
Seth Safier, Esq.
Attorneys for Plaintiff

DATED: October 28, 2020

MAYER BROWN LLP



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