

1 Michael W. Sobol (SBN 194857)
msobol@lchb.com
2 Roger N. Heller (SBN 215348)
rheller@lchb.com
3 LIEFF CABRASER HEIMANN &
BERNSTEIN LLP
4 275 Battery Street, 29th Floor
San Francisco, CA 94111-3339
5 Telephone: 415.956.1000
6 Facsimile: 415.956.1008

7 *Settlement Class Counsel*

8 (additional counsel listed on signature page)

9 **UNITED STATES DISTRICT COURT**
10 **NORTHERN DISTRICT OF CALIFORNIA**
11 **SAN FRANCISCO DIVISION**

12
13 MARCUS A. ROBERTS, KENNETH A.
CHEWEY, AND ASHLEY M. CHEWEY, on
14 behalf of themselves and all others similarly
situated,

15 Plaintiffs,

16 v.

17 AT&T MOBILITY LLC,

18
19
20 Defendant.

Case No. 3:15-cv-03418-EMC

**PLAINTIFFS' NOTICE OF MOTION
AND MOTION FOR FINAL
APPROVAL OF CLASS SETTLEMENT**

Date: August 19, 2021
Time: 1:30 p.m.
Judge: Hon. Edward M. Chen
Courtroom: 5

21
22 TO THE ABOVE-NAMED COURT AND TO THE PARTIES AND THEIR
23 ATTORNEYS OF RECORD:

24 PLEASE TAKE NOTICE that on August 19, 2021, at 1:30 p.m. at 450 Golden Gate
25 Avenue, Courtroom 5, 17th Floor, San Francisco, CA, 94102, Plaintiffs Marcus A. Roberts,
26 Kenneth A. Chewey, and Ashley M. Chewey ("Plaintiffs") will and hereby do move the Court for
27 an order granting final approval of the Amended Class Settlement Agreement (Dkt. 204-1;
28 "Settlement") entered into in this action.

1 This motion is based on: this notice of motion and motion; the accompanying
 2 memorandum of points and authorities; the Settlement (including all exhibits thereto); the
 3 declarations of Plaintiffs Marcus A. Roberts, Kenneth A. Chewey, and Ashley M. Chewey, of
 4 Settlement Class Counsel Roger N. Heller, Alexander H. Schmidt, Eric J. Artrip, Daniel M. Hattis,
 5 John A. Yanchunis, and Jean S. Martin, and of Steven Platt of Angeion Group, LLC, filed herewith;
 6 the papers filed in support of preliminary settlement approval; the Court's Preliminary Approval
 7 Order (Dkt. 205); the argument of counsel; all papers and records on file in this matter; and such
 8 other matters as the Court may consider.

9 As discussed in the accompanying memorandum, the requested relief is appropriate because
 10 the Settlement satisfies the standards for final approval under Fed. R. Civ. P. 23 and Ninth Circuit
 11 precedent.

12 Dated: May 28, 2021

Respectfully submitted,

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

By: /s/ Roger N. Heller

Roger N. Heller (SBN 215348)
 Michael W. Sobol (SBN 194857)
 275 Battery Street, 29th Floor
 San Francisco, CA 94111-3339
 Telephone: 415.956.1000
 Facsimile: 415.956.1008

Alexander H. Schmidt, Esq.
 Fairways Professional Plaza
 5 Professional Circle, Ste. 204
 Colts Neck, New Jersey 07722
 Telephone: (732) 226-0004

D. Anthony Mastando
 Eric J. Artrip
 MASTANDO & ARTRIP, LLC
 301 Washington St., Suite 302
 Huntsville, AL 35801
 Telephone: (256) 532-2222

Daniel M. Hattis (SBN 232141)
 HATTIS LAW
 Post Office Box 1645
 Bellevue, Washington 98009-1645
 Telephone: (650) 980-1990
 Facsimile: (425) 412-7171

John A. Yanchunis
Jean Martin
MORGAN & MORGAN
201 North Franklin Street
7th Floor
Tampa, Florida 33602
Telephone: (813) 275-5272

Settlement Class Counsel

1 Michael W. Sobol (SBN 194857)
msobol@lchb.com
2 Roger N. Heller (SBN 215348)
rheller@lchb.com
3 LIEFF CABRASER HEIMANN &
BERNSTEIN LLP
4 275 Battery Street, 29th Floor
5 San Francisco, CA 94111-3339
6 Telephone: 415.956.1000
Facsimile: 415.956.1008

7 *Settlement Class Counsel*

8 (additional counsel listed on signature page)

9
10 **UNITED STATES DISTRICT COURT**
11 **NORTHERN DISTRICT OF CALIFORNIA**
12 **SAN FRANCISCO DIVISION**

13 MARCUS A. ROBERTS, KENNETH A.
14 CHEWEY, AND ASHLEY M. CHEWEY, on
15 behalf of themselves and all others similarly
situated,

16 Plaintiffs,

17 v.

18 AT&T MOBILITY LLC,

19
20 Defendant.

Case No. 3:15-cv-03418-EMC

**PLAINTIFFS' MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT OF MOTION FOR FINAL
APPROVAL OF CLASS SETTLEMENT**

Date: August 19, 2021

Time: 1:30 p.m.

Judge: Hon. Edward M. Chen

Courtroom: 5

TABLE OF CONTENTS

	Page
INTRODUCTION	1
BACKGROUND	2
I. LITIGATION BACKGROUND	2
A. Procedural History	2
B. Settlement Class Counsel's Investigation and Discovery	4
C. Settlement Negotiations	4
D. Amended Settlement Agreement and Preliminary Settlement Approval	5
II. SUMMARY OF THE SETTLEMENT TERMS	5
A. The Settlement Class	5
B. \$12 Million Non-Reversionary Common Settlement Fund	5
1. Payments to Settlement Class Members	6
2. Administrative Costs	7
3. Attorneys' Fees, Expenses, and Service Awards	8
C. Release	8
III. THE NOTICE PROGRAM DIRECTED BY THE COURT IS BEING IMPLEMENTED AND SATISFIES ALL APPLICABLE STANDARDS.	8
A. Direct Notice to Settlement Class Members	8
B. Social Media Notice Campaign	10
C. Settlement Website and Toll-Free Number	10
D. Reminder Notices	11
E. CAFA Notice	11
IV. THE RESPONSE FROM THE SETTLEMENT CLASS TO DATE HAS BEEN POSITIVE.	11
ARGUMENT	11
I. Overview of the Class Settlement Approval Process	11
II. Rule 23(e)(2) and the Ninth Circuit Factors	12
III. The Settlement is Fair, Reasonable, and Adequate and Should Be Approved	13
A. The Settlement Represents a Strong Result for the Settlement Class, in Light of the Strength of the Claims and Alleged Harm, and Given the Risks, Complexities, and Likely Duration of Ongoing Litigation (Fed. R. Civ. P. 23(e)(2)(C); Ninth Circuit factors 1, 2, 3, and 4)	13
B. The Settlement is the Product of Good Faith, Arm's-Length Negotiations Informed by Significant Investigation, Discovery, and Motion Practice (Fed. R. Civ. P. 23(e)(2)(B); Ninth Circuit Factor 5)	16
C. Plaintiffs and Settlement Class Counsel Have and Continue to Zealously Represent the Class, and Their Experience and Views Further Support Approval (Fed. R. Civ. P. 23(e)(2)(A); Ninth Circuit Factor 6)	17

TABLE OF CONTENTS
(continued)

		Page
3	D. The Settlement Treats Class Members Equitably (Fed. R. Civ. P. 23(e)(2)(D))	18
4	E. The Proposed Method of Distributing Relief Is Effective (Fed. R. Civ. P. 23(e)(2)(C)(ii)).....	19
5	F. The Presence of a Governmental Participant (Ninth Circuit Factor 7)	19
6	G. The Reaction of the Class (Ninth Circuit Factor 8).....	19
7	H. Settlement Class Counsel Seek Reasonable Attorneys' Fees and Reimbursement of Their Litigation Expenses (Fed. R. Civ. P. 23(e)(2)(C)(iii))	20
9	IV. The Court Should Reaffirm Certification of the Settlement Class.	20
10	A. The Requirements of Rule 23(a) Are Satisfied.	20
11	1. Numerosity (Rule 23(a)(1)).....	20
12	2. Commonality (Rule 23(a)(2)).....	21
13	3. Typicality (Rule 23(a)(3))	21
14	4. Adequacy of Representation (Rule 23(a)(4))	21
15	B. The Requirements of Rule 23(b)(3) Are Satisfied	22

TABLE OF CONTENTS

	Page
Cases	
<i>Amchem Prods., Inc. v. Windsor</i> , 521 U.S. 591 (1997).....	23
<i>Butler v. Sears, Roebuck & Co.</i> , 702 F.3d 359 (7th Cir. 2012).....	22
<i>Churchill Village, L.L.C. v. Gen. Elec.</i> , 361 F.3d 566 (9th Cir. 2004).....	13
<i>Class Plaintiffs v. City of Seattle</i> , 955 F.2d 1268 (9th Cir. 1992).....	16
<i>Ellis v. Naval Air Rework Facility</i> , 87 F.R.D. 15 (N.D.Cal.1980) <i>aff'd</i> , 661 F.2d 939 (9th Cir.1981)	18
<i>Evon v. Law Offices of Sidney Mickell</i> , 688 F.3d 1015 (9th Cir. 2012).....	21
<i>FTC v. AT&T Mobility LLC</i> , N.D. Cal., Case No. 14-cv-04785-EMC	1
<i>Hanlon v. Chrysler Corp.</i> , 150 F.3d 1011, 1026 (9th Cir. 1998).....	12
<i>Hernandez v. Cty. of Monterey</i> , 305 F.R.D. 132 (N.D. Cal. 2015)	21
<i>In re First Alliance Mortg. Co.</i> , 471 F.3d 977 (9th Cir. 2006).....	22
<i>In re Syncor ERISA Litig.</i> , 516 F.3d 1095 (9th Cir. 2008).....	13
<i>Jimenez v. Allstate Ins. Co.</i> , 765 F.3d 1161 (9th Cir. 2014).....	21
<i>Just Film, Inc. v. Buono</i> , 847 F.3d 1108 (9th Cir. 2017).....	23
<i>Littlejohn v. Copland</i> , 819 F. App'x 491 (9th Cir. 2020).....	13
<i>McGill v. Citibank, N.A.</i> , 393 P.3d 85 (Cal. 2017).....	3, 16
<i>Parsons v. Ryan</i> , 754 F.3d 657 (9th Cir. 2014).....	21
<i>Tyson Foods, Inc. v. Bouaphakeo</i> , 136 S. Ct. 1036 (2016).....	22
<i>Wal-Mart Stores, Inc. v. Dukes</i> , 564 U.S. 338 (2011).....	21
<i>Wolin v. Jaguar Land Rover N. Am., LLC</i> , 617 F.3d 1168 (9th Cir. 2010).....	23
<i>Wong v. Arlo Techs., Inc.</i> , No. 5:19-CV-00372-BLF, 2021 WL 1531171 (N.D. Cal. Apr. 19, 2021)	12

TABLE OF CONTENTS
(continued)

	Page
Statutes	
28 U.S.C. § 1292.....	3
28 U.S.C. § 1715.....	11, 19
Rules	
Cal. Code Civ. Proc. § 1501.5	7
Cal. Code Civ. Proc. § 1531.....	7
Fed. R. Civ. P. 23(a)	20, 21, 22
Fed. R. Civ. P. 23(b)(3)	20
Fed. R. Civ. P. 23(c)(2)(B)	8
Fed. R. Civ. P. 23(e)(1)	5, 8
Fed. R. Civ. P. 23(e)(2)	12
Fed. R. Civ. P. 23(e)(2)(C)(iii).....	20
Fed. R. Civ. P. 23(h)	20
Treatises	
<i>5 Moore’s Federal Practice—Civil</i> § 23.22 (2016)	20

INTRODUCTION

The Court previously granted preliminary approval of the Settlement reached by the parties in this action and approved the proposed notice program. *See* Dkt. 205. Notice has been, and is being, disseminated to the Settlement Class as directed by the Court. By this motion, Plaintiffs respectfully request that the Court conduct a final review of the Settlement, and approve the Settlement as fair, reasonable, and adequate.

As previously reported, the Settlement is the product of more than five years of hard-fought litigation involving challenging legal issues, including two appeals to the Ninth Circuit regarding AT&T's efforts to compel individual arbitration, a litigated motion to dismiss, and substantial discovery. The Settlement is also the product of arms-length negotiations between the parties through an experienced and well-respected mediator, Cathy Yanni, Esq. of JAMS.

The Settlement here resolves claims on behalf of a statewide California class. Pursuant to the terms of the Settlement,¹ Defendant AT&T Mobility LLC ("AT&T") will pay twelve million dollars (\$12,000,000.00) to create a non-reversionary common Settlement Fund, from which payments will be made to Settlement Class Members. All of the approximately 741,501 Settlement Class accounts that exceeded AT&T's data usage threshold, and were thus subject to throttling, under AT&T's pre-Congestion Aware Throttling (pre-CAT) practice will automatically be issued payments. And all Settlement Class accounts that exceeded AT&T's data usage threshold after AT&T's adoption of Congestion Aware Throttling (CAT), and thus were potentially temporarily throttled, are eligible to submit simple claims for settlement payments. Payments to current customers will be via automatic account credit, and payments to former customers will be via mailed check. The payments under this Settlement are in addition to the payments previously received by Settlement Class Members through the stipulated judgment entered in the related FTC Action.²

The Settlement also provides for a robust class notice program—approved by the Court and being implemented by the Settlement Administrator and the parties—that includes direct notice to

¹ The Settlement is on file at Dkt. 204-1. Capitalized terms not defined here have the meanings given in the Settlement.

² *FTC v. AT&T Mobility LLC*, N.D. Cal., Case No. 14-cv-04785-EMC ("FTC Action").

all Settlement Class Members via a combination of email, mail, and text messages (SMS), a targeted social media notice program, as well as the establishment of a Settlement Website and informational toll-free number. The notice program also includes reminder email and SMS notices to be sent in advance of the Claim Deadline to remind Settlement Class Members to file claims if necessary to receive the payments or full payments for which they are eligible.

While it has only been a couple of weeks since the dissemination of notice commenced, the reaction of the Settlement Class thus far has been very positive. The deadline for Settlement Class Members to request exclusion or object is July 14, 2021. As of May 25, there have been only 13 requests for exclusion and zero objections submitted. By contrast, as of May 25, there have already been 68,576 Group B claims submitted (in addition to the more than 740,000 Settlement Class Members who will receive payments without the need to submit a claim), with reminder email/SMS notices still to be sent in advance of the August 13, 2021 Claim Deadline.

For the foregoing reasons and the others detailed below, the Settlement meets the standards for final settlement approval and should be approved.

BACKGROUND

I. LITIGATION BACKGROUND

A. Procedural History

Plaintiffs filed this case on July 24, 2015, asserting claims on behalf of themselves and a proposed nationwide class and California subclass. Plaintiffs alleged, generally, that AT&T advertised wireless data plans as providing “unlimited” data, but applied undisclosed or inadequately disclosed limitations, after which customers’ data usage was subject to throttling. Dkt. 1. On August 6, 2015, this case was related to the FTC Action and reassigned to this Court. Dkt. 7. On September 3, 2015, Plaintiffs filed a First Amended Complaint, adding additional allegations, one additional plaintiff, James Krenn, and a claim on behalf of a proposed Alabama subclass. Dkt. 11.

On November 2, 2015, AT&T moved to compel arbitration. Dkt. 25. The parties conducted arbitration-related discovery and briefed AT&T’s motion. On February 29, 2016, the Court granted AT&T’s arbitration motion. Dkt. 50. After Plaintiffs moved for leave to seek

1 reconsideration, on April 27, 2016, the Court issued an amended order granting AT&T's arbitration
 2 motion. Dkt. 60 ("Arbitration Order"). On June 27, 2016, the Court granted Plaintiffs' request to
 3 certify the Arbitration Order for interlocutory review pursuant to 28 U.S.C. § 1292(b). Dkt. 69. On
 4 October 20, 2016, the Ninth Circuit granted Plaintiffs permission to appeal the Arbitration Order.
 5 Following full briefing on this first appeal, on December 11, 2017, the Ninth Circuit affirmed the
 6 Court's Arbitration Order. Dkt. 83.

7 After the mandate issued, on remand Plaintiffs moved for leave to seek reconsideration of
 8 the Arbitration Order in light of the California Supreme Court's decision in *McGill v. Citibank*,
 9 N.A., 393 P.3d 85 (Cal. 2017), which was entered during the pendency of the first appeal in this
 10 case. Following briefing, on March 14, 2018, the Court granted Plaintiffs' motion for
 11 reconsideration, denied AT&T's motion to compel arbitration as to the California Plaintiffs
 12 (Marcus A. Roberts, Kenneth A. Chewey, and Ashley M. Chewey), and granted AT&T's motion to
 13 compel arbitration as to Alabama plaintiff James Krenn. Dkt. 103 ("Reconsideration Order").

14 On April 6, 2018, AT&T noticed an appeal of the Reconsideration Order. On June 22,
 15 2018, the Court granted in part and denied in part AT&T's motion to stay proceedings, permitting
 16 the parties to conduct certain discovery while AT&T's appeal was pending. Dkt. 119. The parties
 17 engaged in the permitted discovery, as described below. Following briefing on AT&T's appeal, on
 18 February 18, 2020, the Ninth Circuit affirmed the Court's Reconsideration Order. Dkt. 160.

19 In the meantime, in the FTC Action, AT&T and the FTC notified the Court that they had
 20 reached a settlement. Settlement Class Counsel here appeared in the FTC Action to ensure that the
 21 settlement and judgment there would not operate to release any of the Plaintiffs' or putative class
 22 members' claims in this case, which AT&T confirmed.³

23 After the mandate issued following AT&T's appeal, on May 14, 2020, AT&T filed a
 24 motion to partially dismiss Plaintiffs' First Amended Complaint. Dkt. 169. Plaintiffs opposed
 25 AT&T's motion (Dkt. 182), and AT&T replied (Dkt. 184). On July 2, 2020, the Court held a
 26 hearing and granted in part and denied in part AT&T's motion. Dkt. 188. On August 3, 2020,
 27 Plaintiffs filed their operative Second Amended Complaint, asserting claims on behalf of
 28

³ See generally FTC Action, Dkts. 190-202.

1 themselves and a California class and adding additional allegations including regarding the CAT
 2 iteration of AT&T's data management practice. Dkt. 190 ("SAC").

3 **B. Settlement Class Counsel's Investigation and Discovery**

4 The Settlement in this case was negotiated by counsel who were well-informed about the
 5 issues and litigation risks as a result of their substantial investigation and discovery efforts. Prior to
 6 filing suit, and continuing through the course of the litigation, Settlement Class Counsel conducted
 7 an extensive investigation into the factual and legal issues raised in this litigation. These
 8 investigative efforts have included, *inter alia*, speaking with numerous AT&T wireless customers
 9 over the years about their experiences, thoroughly investigating and analyzing AT&T's advertising,
 10 data management policies, and disclosures, and investigating customer complaints and other
 11 pertinent public information. Settlement Class Counsel also extensively researched and analyzed
 12 the legal issues regarding the claims pled and AT&T's defenses and potential defenses. *See*
 13 Declaration of Roger N. Heller filed herewith ("Heller Decl."), ¶ 17.

14 Moreover, proposed Settlement Class Counsel conducted significant discovery in this case,
 15 including reviewing hundreds of thousands of pages of internal documents produced by AT&T,
 16 deposition transcripts from the FTC Action, and data regarding the number of affected customers.
 17 Heller Decl., ¶¶ 20-21, 24. The parties were also informed by this Court's ruling on AT&T's
 18 motion to dismiss and by the proceedings and judgment in the related FTC Action.

19 **C. Settlement Negotiations**

20 The Settlement is the product of hard-fought, arms-length negotiations. The parties and
 21 their counsel participated in an initial, full-day mediation with Cathy Yanni, Esq. of JAMS on
 22 November 6, 2019, while AT&T's appeal of the Reconsideration Order was pending. That first
 23 session did not result in a settlement. On September 15, 2020, the parties engaged in a second full-
 24 day session with Ms. Yanni, after the resolution of both AT&T's appeal and AT&T's motion to
 25 dismiss. At the conclusion of the second session, the parties reached an agreement in principle to
 26 resolve this case. The parties did not discuss the issue of Settlement Class Counsel's fees and
 27 expenses as part of the negotiations (other than that any amount awarded would be paid from the
 28 common settlement fund). After reaching an agreement in principle, the parties worked diligently

to draft the written settlement agreement, notices, and other settlement exhibits, and to select the Settlement Administrator through a competitive bidding process. Heller Decl., ¶ 24.

D. Amended Settlement Agreement and Preliminary Settlement Approval

On March 4, 2021, the Court held a hearing on preliminary settlement approval. Pursuant to the Court's direction and comments at that hearing, the parties filed the Amended Class Settlement Agreement (Dkt. 204-1; the "Settlement") which made certain modifications to the forms of notice, added the social media notice program and reminder email/SMS notices to the notice program, and added an option for Settlement Class Members to opt-out via email. Dkt. 204. On March 31, 2021, the Court entered an Order granting preliminary approval of the Settlement (as amended), certifying the Settlement Class for settlement purposes, and directing that, under Fed. R. Civ. P. 23(e)(1), class notice be disseminated pursuant to the Settlement's notice program. Dkt. 205.

II. SUMMARY OF THE SETTLEMENT TERMS

The full Settlement terms are set forth in the Amended Class Settlement Agreement, which is on file at Dkt. 204-1. The following is a summary of the Settlement terms.

A. The Settlement Class

The Settlement Class here, as provisionally certified by the Court, is defined as:

All consumers residing in California (based on the accountholder's last known billing address) who purchased an unlimited data plan from AT&T Mobility LLC and who, on or before the date of preliminary settlement approval, exceeded AT&T's applicable data usage threshold for any user on the account for one or more monthly billing cycles such that the user would have been eligible for data usage slowing or deprioritization by AT&T in those billing cycles under AT&T's network management policies.

Dkt. 205, ¶ 5. Entities or persons affiliated with AT&T or the Court are excluded. (Settlement §§ I.36, III)

B. \$12 Million Non-Reversionary Common Settlement Fund

Under the Settlement, AT&T will pay Twelve Million Dollars (\$12,000,000.00) to establish a non-reversionary common Settlement Fund. As detailed below, the Settlement Fund will be used to pay: the settlement payments to Settlement Class Members; the costs of notice and other costs of the Settlement Administrator; and any attorneys' fees and expenses for Settlement Class Counsel

1 and any Plaintiffs' service awards granted by the Court. (Settlement § I.V.A)

2 **1. Payments to Settlement Class Members**

3 The entirety of the Net Distributable Funds—*i.e.*, the \$12 million Settlement Fund, less:
4 Administrative Costs, Court-awarded attorneys' fees and expenses for Settlement Class Counsel,
5 and any Plaintiffs' service awards—will be distributed to the Settlement Class.

6 All approximately 741,501 Settlement Class accounts that exceeded AT&T's data threshold
7 before AT&T adopted CAT (called "Group A Accounts") will automatically be issued a "Group A
8 Payment" without the need to submit a claim. And every Settlement Class account that exceeded
9 AT&T's data threshold after AT&T adopted CAT (called "Group B Accounts") are eligible to
10 submit a simple claim form (electronically via the Settlement Website or by mail) to receive a
11 "Group B Payment." The Group B claim process is simple, requiring that the claimant check a box
12 attesting they believe their AT&T data usage was slowed one or more times in 2014 or later.
13 Accounts that are in both Groups A and B are eligible for both payments. (Settlement § IV.C)⁴

14 The reason claims are required for the Group B period is that, under the CAT iteration of
15 AT&T's policy (adopted in 2014/2015), customers exceeding AT&T's data threshold may (or may
16 not) have experienced slower data speeds. And for those who experienced slower data speeds, the
17 slowing was only temporary, rather than for the remainder of the month (which was the case pre-
18 CAT). Specifically, under the CAT policy, AT&T "deprioritizes" customers' data usage if and
19 when they cross the data threshold, but their data usage is only actually slowed if and when they
20 both exceed the threshold *and* are located in a congested area during a congested time. Such
21 slowed speeds, when they occur, are for a fairly short period of time—typically no more than a
22 couple of hours at maximum and often for significantly less time than that. AT&T's records for the
23 CAT period reflect which accounts exceeded the threshold, but not which were actually throttled
24 and when. Accordingly, Group B accounts must submit a simple claim form, attesting (by
25 checking a box) that they believe their data was slowed at least once in 2014 or later, to receive a
26 Group B Payment. No claim is needed for the Group A period; under AT&T's pre-CAT policy, all

27 ⁴ In all, there are approximately 1,560,548 total Settlement Class accounts, including approximately
28 741,501 Group A accounts and approximately 1,278,335 Group B accounts, with an overlap of
approximately 459,288 accounts that are in both Groups. Declaration of Steven Platt of Angeion
Group, LLC ("Platt Decl."), filed herewith, ¶ 5.

1 customers exceeding the threshold were throttled.

2 The settlement payment amounts for Group A and Group B will be calculated pursuant to
 3 an allocation formula set forth in the Settlement, at a ratio of 3:4. (Settlement § IV.C.1&3).⁵
 4 Based on estimated Administrative Costs, and assuming the Court awarded attorneys' fees and
 5 expenses equal to 25% of the common fund, Plaintiffs estimate the Group A Payment amount will
 6 be approximately \$10.00-\$11.00, and the Group B Payment amount will be approximately \$13.00-
 7 \$14.00.⁶ The Group A Payments will be *on top of* payments received by Settlement Class Members
 8 in the FTC Action.⁷

9 Payments to Settlement Class Members who are current AT&T customers will be via
 10 automatic credit to their AT&T accounts. Payments to former AT&T customers will be via mailed
 11 check, with appropriate steps taken to locate updated address information and re-issue checks that
 12 are returned undeliverable. (Settlement § IV.C.4) Any residual funds remaining one year after
 13 checks are initially mailed—consisting of uncashed or undeliverable checks—will be treated as
 14 unclaimed property of the corresponding customers, subject to applicable state unclaimed property
 15 procedures. (Settlement § IV.C.5)⁸ In no event will any funds revert to AT&T.

16 2. Administrative Costs

17 The fees and costs of the Settlement Administrator—in implementing the notice program,
 18 administering the Group B claims process, mailing checks to former customers, and performing the

19 ⁵ The 3:4 ratio is set via the Initial Payment amounts (\$7.50:\$10.00) for the two Groups, which are
 20 then adjusted *pro rata* under the payment allocation formula. (Settlement § IV.C.1&3)

21 ⁶ Settlement Class accounts in both Groups are eligible for both payments; *i.e.*, if such Settlement
 22 Class Members submit valid Group B claims, they would get an estimated total payment of
 23 approximately \$23.00-\$25.00.

24 ⁷ The FTC Action and stipulated judgment therein addressed only pre-CAT throttling. FTC Action,
 25 Dkt. 202 at 4 n.3. Under the FTC judgment, most payment recipients received approximately
 26 \$12.00, with a smaller portion receiving approximately \$31.00. FTC Action, Dkts. 192, 202.

27 ⁸ Any additional administrative costs associated with this residual process will be paid from the
 28 residual funds, and will reduce *pro rata* the respective unclaimed property amounts for the
 Settlement Class Members with uncashed or undeliverable checks. (Settlement § IV.C.5) The
 unclaimed property process and timing vary by state. In California, where most Settlement Class
 Members are expected to reside, following a “dormancy period,” during which the funds would be
 claimable from the Settlement Administrator, and after a “due diligence” notice is sent to the
 individuals in question, the funds that remain unclaimed, along with the corresponding names,
 payment amounts, and last known addresses, would be sent to the California State Controller’s
 Office for deposit in the State’s general fund. At that point, the Settlement Class Members in
 question will still be able to claim the funds by following the state unclaimed property procedure;
 in California, there is no time limit for submitting such claims (*i.e.*, the funds would be available to
 claim in perpetuity). *See* Cal. Code Civ. Proc. §§ 1501.5, 1531; <https://ucpi.sco.ca.gov/UCP/#>.

other administrative tasks described in the Settlement—will be paid from the Settlement Fund. (Settlement § IV.A). The Settlement Administrator currently estimates that the total Administrative Costs in this case will be \$491,575. Platt Decl., ¶ 35.

3. Attorneys' Fees, Expenses, and Service Awards

Settlement Class Counsel are filing herewith their fee application, requesting a total of \$3,000,000 (*i.e.*, 25% of the Settlement Fund)—consisting of \$2,932,333.98 in attorneys' fees, plus reimbursement of \$67,666.02 in litigation expenses. Settlement Class Counsel are also requesting service awards of \$2,500 for each of the three Plaintiffs, to compensate them for their efforts and commitment on behalf of the Settlement Class. Settlement Class Counsel's fee application will be available on the Settlement Website after it is filed. Any attorneys' fees, expenses, and service awards granted by the Court will be paid from the Settlement Fund. (Settlement §§ IV.A, XI.C&H)

C. Release

In exchange for the consideration provided under the Settlement, Settlement Class Members will release AT&T and its affiliates from any claims about the issues in this case. The scope of the release substantively tracks the scope of the operative SAC.⁹ (Settlement § IX)

III. THE NOTICE PROGRAM DIRECTED BY THE COURT IS BEING IMPLEMENTED AND SATISFIES ALL APPLICABLE STANDARDS.

The Notice program set forth in Section VI of the Settlement and approved by the Court in the Preliminary Approval Order (Dkt. 205, ¶¶ 11-25), has been, and is being, implemented. *See generally* Platt Decl. The Court-approved Notice program satisfies all applicable standards, including Fed. R. Civ. P. 23(e)(1) and 23(c)(2)(B), and includes the following:

A. Direct Notice to Settlement Class Members

Direct notice was sent to the entire Settlement Class. Pursuant to the Preliminary Approval Order, by April 14, 2021, AT&T provided the Settlement Administrator with the Settlement Class Member contact information and other Customer Data. Platt Decl., ¶ 4. By May 15, 2021 (the "Notice Date" set by the Court, *see* Dkt. 205, ¶ 41), the appropriate forms of direct notice were sent to the Settlement Class Members. Platt Decl., ¶¶ 11-25. The direct notices are tailored based on

⁹ *See* Settlement § IX.B (claims "arising from or relating to AT&T's advertising or promises of 'unlimited data' for wireless data plans or the throttling or suspension of data usage for AT&T 'unlimited' wireless data plans"); Dkt. 190 (SAC).

whether the Settlement Class Member is in Group A, Group B, or both Groups.

Email Notice: By the Notice Date, the Settlement Administrator emailed the appropriate form of Email Notice to every Settlement Class account for which an email address is included in the Customer Data. Platt Decl., ¶¶ 15-17.

SMS Notice: By the Notice Date, AT&T sent, via text message, the appropriate form of SMS Notice to the AT&T cellular telephone number(s) for each Settlement Class account for which AT&T's Customer Data identifies that both: (1) the account is a current AT&T account and (2) no accountholders for the account have opted out of receiving such messages. Both email and SMS notices were sent to Settlement Class Members meeting the criteria for both. Platt Decl., ¶¶ 7c, 18. Each SMS Notice includes a hyperlink to the substance of the corresponding Email Notice.¹⁰ AT&T provided the Settlement Administrator with information regarding which Settlement Class accounts were and were not successfully sent an SMS Notice. Platt Decl., ¶¶ 19-21.

Mail Notice: By the Notice Date, the Settlement Administrator sent, via first class U.S. mail, postage pre-paid, the appropriate form of Postcard Notice to Settlement Class accounts not eligible to receive email notice and/or SMS notice. Platt Decl., ¶¶ 11-13. Moreover, for any Settlement Class Members where either (1) AT&T attempted but was not successful in sending SMS Notice; or (2) the Settlement Administrator sent Email Notice but received notice that the Email Notice was not received (i.e., a "bounce-back"), the Settlement Administrator mailed the appropriate form of Postcard Notice to them via first class U.S. mail, postage pre-paid, at their address as updated by the National Change of Address Database. Platt Decl., ¶¶ 22-24. The Settlement Administrator will promptly re-mail any postcard notices returned undeliverable with forwarding address information to the new address. Platt Decl., ¶ 14. For postcard notices returned undeliverable without forwarding address information, the Settlement Administrator will attempt to locate updated address information using industry-standard "skip trace" processes and if successful will re-mail postcard notices to the new address. Platt Decl., ¶ 14.

The direct notices sent to Settlement Class Members are tailored such that, based on the particular recipient, the notice identifies whether that recipient needs to submit a claim to receive a

¹⁰ For example, for accounts that are in Group A only, the hyperlink in their SMS notice linked to the substance of Email Notice A.

1 payment (accounts in Group B only), needs to submit a claim to receive the full payment amount
 2 for which they are eligible (accounts that are in both Groups A and B), or does not need to submit a
 3 claim to get the full payment for which they are eligible (accounts in Group A only). The
 4 Email/SMS Notices for Settlement Class Members eligible to submit claims include hyperlinks to
 5 the Settlement Website where they can submit claims, and the Postcard Notices prominently list the
 6 URL for the Settlement Website where they can submit claims. The notices also include unique
 7 Personal ID numbers to help facilitate submitting claims.

8 **B. Social Media Notice Campaign**

9 The Settlement Administrator initiated, and will continue to implement, a targeted social
 10 media notice campaign (Settlement § VI.8; Dkt. 205, ¶ 19), to provide additional notice to
 11 Settlement Class Members. The social media notice campaign includes: (a) a custom Facebook
 12 campaign whereby additional notice will be provided directly via Facebook to Group B Accounts
 13 (i.e., Settlement Class accounts that must submit claims to receive a payment or the full payment
 14 they are eligible for) with identifiable Facebook accounts; and (b) a supplemental interest-based
 15 Facebook and Instagram campaign designed to target Settlement Class Members. Platt Decl.,
 16 ¶¶ 26-27; *see also* Dkt. 204-2 (Supp. Weisbrot Decl.), ¶¶ 11-19 (describing the social media notice
 17 campaign).

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

19 Before sending the Notices, the Settlement Administrator established the Settlement
 20 Website (www.ATTUnlimitedDataSettlement.com), where Settlement Class Members can view the
 21 Settlement, a long-form Website Notice and other key case documents, and can obtain further
 22 information about the Settlement and their rights. Settlement Class Members can submit claims for
 23 Group B payments electronically via the Settlement Website. The Settlement Website is optimized
 24 for display on mobile phones. The Settlement Administrator also timely established a Toll-Free
 25 Number where Settlement Class Members can obtain additional information. The Settlement
 26 Website and Toll-Free number will be operational until at least one year after settlement payment
 27 checks are mailed. Platt Decl., ¶¶ 28-31.

D. Reminder Notices

By May 29, 2021, the Settlement Administrator will email a Reminder Email Notice to each Settlement Class Account that was sent Email Notice B or Email Notice C. Depending on the volume of Claim Form submissions and in consultation with the Parties, prior to the Claim Deadline, the Settlement Administrator may also send a second Reminder Email Notice to Settlement Class Accounts that have not yet submitted a Claim Form. Dkt. 205, ¶ 22.

By May 31, 2021, the Settlement Administrator will report to AT&T regarding which Group B Accounts have not yet submitted a Claim Form. Between twenty-one and fourteen days before the August 13, 2021 Claim Deadline, AT&T will send via SMS a Reminder SMS Notice to the AT&T cellular telephone number(s) for each Settlement Class Account in Group B for which the SMS was previously sent successfully and for which a Claim Form has not yet been submitted for the account. Dkt. 205, ¶ 23.

E. CAFA Notice

The Settlement Administrator timely served notice of the proposed Settlement, in accordance with 28 U.S.C. § 1715, upon the appropriate State and Federal officials. Platt Decl., ¶ 9.

IV. THE RESPONSE FROM THE SETTLEMENT CLASS TO DATE HAS BEEN POSITIVE.

The response from the Settlement Class thus far has been very positive. The deadline to opt out or object is July 14, 2021. As of May 25, 2021, only 13 Settlement Class Members have opted out and zero objections have been submitted.¹¹ By contrast, by May 25, 2021, 68,576 claims for Group B payments have already been filed¹²—only about two weeks after the notices were first sent and more than two months before the August 13, 2021 Claims Deadline, with reminder email/SMS notices still to be sent in advance of that deadline. Plaintiffs will provide the Court with updated opt-out, objections, and claims figures in advance of the August 19, 2021 Fairness Hearing.

ARGUMENT

I. Overview of the Class Settlement Approval Process

Pursuant to Rule 23(e), a class action settlement must be approved by the court before it can

¹¹ Platt Decl., ¶¶ 33-34.

¹² Platt Decl., ¶ 32.

become effective. The process for court approval is comprised of two principal steps:

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

In granting preliminary approval of the Settlement and directing that notice be disseminated to the Settlement Class, the Court took the first step in the process. Dkt. 205. Moreover, as summarized above, the Settlement Administrator has been, and is, implementing the notice program as directed by the Court. *See generally* Platt Decl. By this motion, Plaintiffs respectfully request that the Court take the final step by granting final approval of the Settlement.

II. Rule 23(e)(2) and the Ninth Circuit Factors

The overarching standard for class settlement approval is whether the proposed settlement is “fair, reasonable, and adequate.” Fed. R. Civ. P. 23(e)(2). As part of that determination, Rule 23(e)(2) directs courts to consider whether:

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

Id. “In the Ninth Circuit, courts traditionally [also] use a multi-factor balancing test to analyze whether a given settlement is fair, adequate and reasonable. That test includes the following factors:

the strength of the plaintiffs’ case; the risk, expense, complexity, and likely duration of further litigation; the risk of maintaining class action status throughout the trial; the amount offered in settlement; the extent of discovery completed and the stage of the proceedings; the experience and views of counsel; the presence of a governmental participant; and the reaction of the class members to the proposed settlement.

Wong v. Arlo Techs., Inc., No. 5:19-CV-00372-BLF, 2021 WL 1531171, at *5 (N.D. Cal. Apr. 19, 2021) (quoting *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998)). The Rule 23(e)(2)

factors and the traditional Ninth Circuit factors overlap somewhat, and courts look to both when deciding whether to grant final approval to class action settlement, while remaining ultimately focused on the underlying question of whether the settlement is fair, reasonable, and adequate. *See id.* (discussing interplay between factors and considering both to grant final approval to class action settlement); *see also Littlejohn v. Copland*, 819 F. App'x 491, 493 (9th Cir. 2020).

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

III. The Settlement is Fair, Reasonable, and Adequate and Should Be Approved

A. The Settlement Represents a Strong Result for the Settlement Class, in Light of the Strength of the Claims and Alleged Harm, and Given the Risks, Complexities, and Likely Duration of Ongoing Litigation (Fed. R. Civ. P. 23(e)(2)(C); Ninth Circuit factors 1, 2, 3, and 4)

The Settlement provides substantial monetary relief—a \$12 million non-reversionary fund, which AT&T will pay on top of (*i.e.*, in addition to) the payments Settlement Class Members received pursuant to the stipulated judgment in the FTC Action. Based on estimated Administrative Costs (\$491,575) and assuming the Court awarded attorneys’ fees and expenses equal to 25% of the common fund, Plaintiffs estimate that the Group A Payment (automatically issued to all Group A accounts) will be approximately \$10.00-\$11.00, and the Group B Payment (issued to all Group B Valid Claimants) will be approximately \$13.00-\$14.00. These amounts represent a strong result given, *inter alia*, the potential recovery, the partial payments already received by Settlement Class Members via the FTC Action judgment, and the risks and delay of ongoing litigation in this case.

With respect to Group A, to put the estimated \$10.00-\$11.00 payment in perspective: the average monthly cost of an AT&T unlimited data plan was approximately \$30.00. The approximate average number of throttled monthly billing periods per Group A account (*i.e.*, across all lines on the account, for those accounts where at least one line exceeded the threshold at least once pre-CAT) was approximately 7.5 monthly billing periods. At \$30.00 per month, the full cost

1 of data service for 7.5 monthly billing periods is approximately \$225.00.

2 It is unlikely, however, that Plaintiffs and the class could recover that much, even assuming
 3 Plaintiffs were to overcome the numerous remaining pre-trial obstacles, prevail at trial, and survive
 4 an inevitable further appeal. AT&T would have arguments for significantly reducing that amount.
 5 Some of the throttling occurred after the (generally two-year) contract period in which the accounts
 6 were throttled for the first time. AT&T will argue that any possible damages would, at the least, be
 7 cut off after the first contract period during which the customer was throttled, because the customer
 8 was then “on notice” and could have discontinued their service plan. Even assuming as much as
 9 one-half of the throttling (*i.e.*, 3.75 monthly billing periods) occurred during the first contract period
 10 in which the customers were first throttled, this argument if successful would reduce the estimated
 11 average damages to about \$112.50 per Group A account. AT&T will also argue that, even in the
 12 monthly billing periods that customers were throttled, they got some of what they paid for—*i.e.*,
 13 data service for the part of the period before they were throttled. Plaintiffs understand that
 14 throttling typically occurred towards the latter part of the monthly billing period (after the account
 15 exceeded the data threshold for the period). Even if it were assumed that on average customers
 16 were throttled beginning in the *middle* of the monthly billing period, this argument if successful
 17 would cut in half the amount for any one-period’s throttling—resulting in estimated average
 18 damages, under the above assumptions, of approximately \$56.25 per Group A account.

19 Further, as the Court is aware, Group A accounts previously received partial payments for
 20 the pre-CAT throttling they incurred, via the FTC Action stipulated judgment. Most of those
 21 payments were \$12.00 (though a smaller portion got \$31.00).¹³ Applying the \$12.00 payments as
 22 an offset here—which no doubt would have occurred if this case were litigated to trial—estimated
 23 damages, using the above assumptions, would be reduced to approximately \$44.25 per Group A
 24 account. The estimated \$10.00-\$11.00 Group A Payment amount represents approximately 22.6%-
 25 24.9% of that figure.

26 With respect to Group B, the average damages would likely be lower, because data slowing
 27 under CAT—when it occurred—was not automatic and was only temporary (*i.e.*, only if, and
 28

¹³ FTC Action, Dkts. 192, 202.

during such moments when, *both* the customer had passed the data threshold for that billing period *and* the local cellular site was experiencing congestion). Estimating Group B damages is admittedly more difficult given, *inter alia*, limitations in AT&T's data. However, the average number of Group B account monthly billing periods where the line exceeded the data usage threshold during CAT and thus was deprioritized (i.e., subject to *potential* data slowing under CAT) was approximately 15 monthly billing periods (across all lines on the account, for those accounts where at least one line exceeded the threshold at least once during CAT). While AT&T's CAT-period data does not identify which Group B accounts were actually throttled, when or for how long, even if it were assumed that *all* of the lines in question were throttled at some point in *every* monthly billing period they exceeded the data threshold, and even using an aggressively high assumption that throttling for these lines occurred for 10% of the time during monthly billing periods in question (*i.e.*, arguably taking away 10% of the value of the data service that month),¹⁴ the estimated damages per throttled Group B account would be approximately \$45.00.¹⁵ The estimated \$13.00-\$14.00 Group B Payment amount represents approximately 28.9%-31.1% of that figure.

To be sure, the above figures are estimates, and there are multiple ways to measure potential damages in this case,¹⁶ but the above calculations provide useful perspective on the value and adequacy of the payment amounts and the Settlement in this case. The payment amounts represent a strong result for the Settlement Class, particularly given the substantial risks, costs, and delay of continued litigation. Liability remains very much disputed in this case. Among other arguments and defenses that AT&T has asserted and/or indicated it will assert are: (a) Settlement Class

¹⁴ This 10% assumption is very likely high. Not all geographic areas experienced significant or regular congestion periods. Even where there was congestion in an area (one pre-requisite to being throttled under CAT), AT&T has represented that these periods of congestion, even in such areas, were generally no more than about two hours per day. And, again, customers would only have been subjected to this potential slowing under CAT after they crossed the data threshold for the monthly billing period, which would not have occurred until some point into the monthly billing period, not from the start of the period.

¹⁵ \$30.00/mo. cost X 15 billing cycles = \$450.00. \$450.00 X 10% lost value = \$45.00.

¹⁶ For example, in the FTC Action (which involved pre-CAT only) it was estimated that the total payments there represented between 32-47% of the potential recovery. FTC Action, Dkt. 192 at 4. Under that approach/measure, the estimated \$10.00-\$11.00 Group A Payments here would push the total received by these Settlement Class Members for their pre-CAT throttling (inclusive of the FTC Action payments) well above that range.

Members' purchase decisions were not motivated by, or exclusively by, the representations about unlimited data; (b) AT&T adequately discloses the data usage limits in its marketing and elsewhere; (c) customers' data usage was slowed, but not cut off, even during throttling; and (d) AT&T's form terms of service permitted the conduct at issue. AT&T also disputes whether this case can be manageably tried on a class basis, and has made clear its intention to argue that the judgment in the FTC Action renders class treatment, for purposes other than settlement, not superior. Further, while Plaintiffs were able to overcome AT&T's efforts to compel arbitration, AT&T has made clear its intent to re-raise arbitration if *McGill* were ever invalidated.

While Plaintiffs believe that they can overcome AT&T's defenses and challenges, they are indicative of the risks, hurdles, and delays that Plaintiffs and the Settlement Class face should this matter proceed in litigation. The proposed Settlement provides considerable monetary relief for the Settlement Class while allowing them to avoid the risks of unfavorable, and in some cases dispositive, rulings on these and other issues.

The Settlement also provides prompt relief, of particular importance here given that this case was filed more than five years ago. Continued litigation would likely add several more years before there is a resolution, given the remaining issues and likelihood of additional appeals.

B. The Settlement is the Product of Good Faith, Arm's-Length Negotiations Informed by Significant Investigation, Discovery, and Motion Practice (Fed. R. Civ. P. 23(e)(2)(B); Ninth Circuit Factor 5)

"Before approving a class action settlement, the district court must reach a reasoned judgment that the proposed agreement is not the product of fraud or overreaching by, or collusion among, the negotiating parties." *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1290 (9th Cir. 1992); *see also* Fed. R. Civ. P. 23(e)(2)(B). The Settlement here is the product of hard-fought, arms-length negotiations between the parties and their qualified and informed counsel. The parties participated in two full-day mediations with an experienced and well-respected mediator, Cathy Yanni, Esq. of JAMS, and were able to reach an agreement on deal terms through those efforts. The parties worked diligently for months after reaching the agreement-in-principle to draft the written settlement agreement, prepare the forms of notice and other settlement exhibits, select a proposed Settlement Administrator through a competitive bidding process, and supplement the

1 notice program following the discussion with the Court at the preliminary approval hearing. Heller
 2 Decl., ¶¶ 24-25. Throughout their negotiations, the parties were represented by counsel
 3 experienced in the prosecution, defense, and settlement of complex class actions.¹⁷

4 Moreover, as discussed above, the Settlement is informed by counsel's substantial
 5 investigation and discovery regarding the legal and factual issues in the litigation, which included
 6 reviewing, *inter alia*, hundreds of thousands of pages of documents produced by AT&T and
 7 deposition transcripts from the FTC Action. *See supra* Background §§ I.A-B; Heller Decl.,
 8 ¶¶ 17-21. Further, as the Court is aware, there was significant motion practice in this case,
 9 including several arbitration-related motions in this Court, two appeals to the Ninth Circuit
 10 regarding arbitration, and AT&T's motion to dismiss, as well as the proceedings in the related FTC
 11 Action. In negotiating the Settlement, the parties and their counsel were informed by their work in
 12 briefing these issues and, of course, by the various court rulings.

13 **C. Plaintiffs and Settlement Class Counsel Have and Continue to Zealously**
 14 **Represent the Class, and Their Experience and Views Further Support**
Approval (Fed. R. Civ. P. 23(e)(2)(A); Ninth Circuit Factor 6)

15 Plaintiffs and Settlement Class Counsel have prosecuted this action on behalf of the
 16 Settlement Class with vigor and dedication for more than five years, in this Court and through two
 17 rounds of appeals. *See* Fed. R. Civ. P. 23(e)(2)(A). As discussed in the accompanying declarations,
 18 Settlement Class Counsel have thoroughly investigated and researched the factual and legal issues
 19 involved, conducted substantial discovery, and engaged in motions and appellate practice in
 20 furtherance of prosecuting the claims here. *See also supra* Background §§ I.A-B. Likewise,
 21 Plaintiffs have personally been actively engaged—they each provided information about their
 22 experiences and their AT&T accounts for inclusion in the complaints and other filings, reviewed
 23 pleadings, and communicated regularly with counsel up to and including evaluating and approving
 24 the Settlement.¹⁸

25 ¹⁷ Heller Decl., ¶¶ 2-10; Declaration of Alexander Schmidt filed herewith ("Schmidt Decl."),
 26 ¶¶ 3-6; Declaration of Daniel Hattis filed herewith ("Hattis Decl."), ¶¶ 6-7; Declaration of Eric
 27 Artrip filed herewith ("Artrip Decl."), ¶¶ 3-4, 6-7; Declaration of Jean Martin filed herewith
 ("Martin Decl."), ¶¶ 4-7; Declaration of John Yanchunis filed herewith ("Yanchunis Decl."),
 ¶¶ 4-8, 11-12.

28 ¹⁸ Declaration of Marcus Roberts filed herewith ("Roberts Decl."), ¶¶ 5-10; Declaration of Kenneth
 Chewey filed herewith ("K. Chewey Decl."), ¶¶ 5-10; Declaration of Ashley Chewey filed herewith
 ("A. Chewey Decl."), ¶¶ 5-10.

Based on their experiences, both Plaintiffs and Settlement Class Counsel view the Settlement as absolutely fair, reasonable, and adequate. Settlement Class Counsel here have extensive experience litigating and settling consumer class actions and other complex matters, including cases involving alleged false advertising, telecommunications services (including the *Tracfone* action, which involved similar alleged conduct as this case), and motions to compel arbitration.¹⁹ They have conducted an extensive investigation into, and taken considerable discovery regarding, the factual and legal issues raised. The fact that qualified and well-informed counsel endorse the Settlement as being fair, reasonable, and adequate weighs in favor of the Court approving the Settlement. *Ellis v. Naval Air Rework Facility*, 87 F.R.D. 15, 18 (N.D. Cal. 1980) *aff'd*, 661 F.2d 939 (9th Cir. 1981) (“[T]he fact that experienced counsel involved in the case approved the settlement after hard-fought negotiations is entitled to considerable weight.”).

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

The proposed allocation of settlement payments (Settlement § IV.C.1&3) was chosen by the parties to ensure that Settlement Class Members are treated equitably. All accounts subject to throttling pre-CAT (*i.e.*, Group A accounts) will receive equal Group A Payments without the need to submit a claim. All accounts that exceeded the data threshold under CAT (*i.e.*, Group B accounts) are all eligible to submit claims for equal Group B Payments. Accounts that are in both Groups are eligible for both payments.

Requiring Group B accounts to submit claims makes sense because, unlike with Group A and AT&T’s pre-CAT policy, exceeding the data usage threshold under CAT does not mean the customer was necessarily throttled. AT&T’s data does not reflect which Group B accounts were actually throttled. (Settlement § I.I) Accordingly, Group B accounts must submit a simple claim form indicating (by checking a box) their belief that they incurred data slowing one or more times in 2014 or later.²⁰ The claims process and claim form are simple and user-friendly. Claims can be submitted electronically via the Settlement Website, or by mail, and the individually tailored direct notices included the URL and hyperlinks to the Settlement Website where claims can be submitted,

¹⁹ Heller Decl., ¶¶ 2-10; Schmidt Decl., ¶¶ 3-6; Hattis Decl., ¶¶ 6-7; Artrip Decl., ¶¶ 3-4, 6-7; Martin Decl., ¶¶ 4-7; Yanchunis Decl. ¶¶ 4-8, 11-12.

²⁰ AT&T adopted CAT in 2014/2015. (Settlement § I.I)

as well as unique Personal ID numbers, to facilitate submitting claims.

The respective payment amounts are equitable as well. Under the proposed allocation, it is estimated that Group A accounts will ultimately receive a *total* of approximately \$22.00-\$23.00 for their pre-CAT throttling—including both the estimated \$10.00-\$11.00 Group A Payment via this Settlement and the mostly \$12.00 payments previously received via the FTC Action—and Group B Valid Claimants will receive approximately \$13.00-\$14.00. This allocation/proportion is reasonable and appropriate given, *inter alia*, the pre-CAT throttling (Group A) was more severe than under CAT (Group B). Moreover, while it is anticipated that in the aggregate a larger portion of the settlement payments will be paid as compensation for pre-CAT throttling (i.e., Group A), that is also fair and reasonable for the same reason. As discussed above, the data slowing under CAT (when and where it occurs) is only temporary—if and when the local cellular tower is experiencing a period of congestion (time windows that, when they occur, are typically no longer than a couple of hours and are often for significantly less time than that). By contrast, the throttling pre-CAT was for the remainder of the monthly billing period once the customer passed the data usage threshold.

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

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

F. The Presence of a Governmental Participant (Ninth Circuit Factor 7)

Notice was sent to the relevant governmental agencies pursuant to 28 U.S.C. § 1715. Platt Decl., ¶ 9. To date, no governmental entity has raised concerns about the Settlement.

G. The Reaction of the Class (Ninth Circuit Factor 8)

Direct notice of the Settlement was sent to the entire Settlement Class. The deadline for Settlement Class Members to opt-out or object is July 14, 2021. As of May 25, only 13 persons have requested exclusion, and no objections have been submitted.²¹ By contrast, as of May 25,

²¹ Platt Decl., ¶¶ 33-34.

68,576 claims for Group B payments have already been filed²² (only about two weeks after the notice program commenced), with reminder emails/SMS still to be sent in advance of the August 13, 2021 Claims Deadline. Plus, Settlement Class Members with accounts in Group A will receive payments without taking any action so long as they do not opt out. The positive reaction thus far further supports the conclusion that the Settlement is fair, reasonable, and adequate. *See Churchill Village*, 361 F.3d at 577 (upholding approval of class settlement with 45 objections and 500 opt-outs for a class of 150,000). Plaintiffs will provide updated claims, opt-out, and objection numbers in advance of the August 19, 2021 Fairness Hearing.

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

Rule 23(e)(2)(C)(iii) requires the Court to consider “the terms of any proposed award of attorney’s fees, including timing of payment.” Here, Settlement Class Counsel are seeking attorneys’ fees and expenses in a concurrently filed motion. That motion (and this motion) will be available on the Settlement Website after filing, and Settlement Class Members will have the opportunity to comment on or object under Fed. R. Civ. P. 23(h) prior to the Fairness Hearing. As with the payments to Settlement Class Members, any attorneys’ fees and expenses awarded by the Court will be paid from the Settlement Fund following the Effective Date of the Settlement.²³

IV. The Court Should Reaffirm Certification of the Settlement Class.

The Court previously provisionally certified the Settlement Class as part of the Preliminary Approval Order. Dkt. 205, ¶¶ 5-6. The Court should reaffirm certification of the Settlement Class, for settlement purposes because the standards of Rule 23(a) and Rule 23(b)(3) are satisfied.

A. The Requirements of Rule 23(a) Are Satisfied.

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

Rule 23(a)(1) requires that “the class is so numerous that joinder of all members is impracticable.” Fed. R. Civ. P. 23(a)(1). A “class of 41 or more is usually sufficiently numerous.” 5 *Moore’s Federal Practice—Civil* § 23.22 (2016); *see also Hernandez v. Cty. of Monterey*, 305

²² Platt Decl., ¶ 32.

²³ Finally, there are no agreements between the parties other than the Settlement. *See* Fed. R. Civ. P. 23(e)(3) (“the parties seeking approval must file a statement identifying any agreement made in connection with the proposal”).

1 F.R.D. 132, 153 (N.D. Cal. 2015). Numerosity is easily satisfied here. There are approximately
 2 1,560,548 accounts in the Settlement Class. Platt Decl., ¶ 5.

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

4 Rule 23(a)(2) requires that there be one or more questions common to the class.
 5 Commonality “does not turn on the number of common questions, but on their relevance to the
 6 factual and legal issues at the core of the purported class’ claims.” *Jimenez v. Allstate Ins. Co.*, 765
 7 F.3d 1161, 1165 (9th Cir. 2014). “Even a single question of law or fact common to the members of
 8 the class will satisfy the commonality requirement.” *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338,
 9 369 (2011). This case raises multiple common questions, including whether AT&T’s “unlimited”
 10 data representations are material to a reasonable consumer, and whether AT&T’s form terms of
 11 service permitted the alleged conduct.

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

13 Under Rule 23(a)(3), a plaintiff’s claims are “typical” if they are “reasonably coextensive
 14 with those of absent class members; they need not be substantially identical.” *Parsons v. Ryan*, 754
 15 F.3d 657, 685 (9th Cir. 2014) (citation omitted). “The test of typicality is whether other members
 16 have the same or similar injury, whether the action is based on conduct which is not unique to the
 17 named plaintiffs and whether other class members have been injured by the same course of
 18 conduct.” *Hernandez*, 305 F.R.D. at 159. Plaintiffs’ claims and those of the Settlement Class are
 19 based on the same course of conduct and the same legal theories. Moreover, Plaintiff and the
 20 Settlement Class Members all suffered the same type of alleged harm.²⁴

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

22 Rule 23(a)(4)’s adequacy inquiry asks “(1) do the named plaintiffs and their counsel have
 23 any conflicts of interest with other class members and (2) will the named plaintiffs and their counsel
 24 prosecute the action vigorously on behalf of the class?” *Evon v. Law Offices of Sidney Mickell*, 688
 25 F.3d 1015, 1031 (9th Cir. 2012). Settlement Class Counsel have extensive experience litigating and
 26 resolving class actions, and are well qualified to represent the Settlement Class.²⁵ Since filing this

27 ²⁴ Plaintiffs were subject to throttling by AT&T both pre-CAT and during CAT. Dkt. 190 (SAC),
 ¶¶ 76, 93-94.

28 ²⁵ Heller Decl., ¶¶ 2-10; Schmidt Decl., ¶¶ 3-6; Hattis Decl., ¶¶ 6-7; Artrip Decl., ¶¶ 3-4, 6-7;
 Martin Decl., ¶¶ 4-7; Yanchunis Decl. ¶¶ 4-8, 11-12.

1 case, they have vigorously litigated, conducted extensive investigation and discovery, negotiated
 2 the proposed Settlement, and have, and will continue to, fairly and adequately protect the interests
 3 of the Settlement Class.²⁶ Likewise, Plaintiffs have demonstrated their commitment to the
 4 Settlement Class, including by providing pertinent information about their experiences and
 5 accounts, regularly communicating with their counsel about the case, and reviewing and approving
 6 the proposed Settlement.²⁷ Finally, Plaintiffs' and Settlement Class Counsel's interests are aligned
 7 with and not antagonistic to the interests of the Settlement Class. Plaintiffs and Settlement Class
 8 Members share an interest in obtaining relief from AT&T for the alleged violations.

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

10 In addition to the requirements of Rule 23(a), at least one of the prongs of Rule 23(b) must
 11 be satisfied. Here, Plaintiffs seek certification under Rule 23(b)(3), which requires that "questions
 12 of law or fact common to the class members predominate over any questions affecting only
 13 individual members, and that a class action is superior to other available methods for fairly and
 14 efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3).

15 "The predominance inquiry 'asks whether the common, aggregation-enabling, issues in the
 16 case are more prevalent or important than the non-common, aggregation-defeating, individual
 17 issues.'" *Tyson Foods, Inc. v. Bouaphakeo*, 136 S. Ct. 1036, 1045 (2016) (citation omitted)). At its
 18 core, "[p]redominance is a question of efficiency." *Butler v. Sears, Roebuck & Co.*, 702 F.3d 359,
 19 362 (7th Cir. 2012). The Ninth Circuit favors class treatment of claims stemming from a "common
 20 course of conduct," like those alleged in this case. *See In re First Alliance Mortg. Co.*, 471 F.3d
 21 977, 989 (9th Cir. 2006).

22 Common questions predominate. The Settlement Class Members' claims all arise under the
 23 same California laws and the same alleged course of conduct. The questions that predominate
 24 include whether AT&T's "unlimited" data representations are material to a reasonable consumer,
 25 whether AT&T's alleged conduct was unfair and/or deceptive, and whether AT&T alleged conduct
 26 was permitted by its form terms of service. Moreover, under the proposed Settlement, there will not
 27 need to be a class trial, meaning there are no potential concerns about any individual issues, if any,

28 ²⁶ *See supra* Background §§ I.A-B.

²⁷ Roberts Decl., ¶¶ 5-10; K. Chewey Decl., ¶¶ 5-10; A. Chewey Decl., ¶¶ 5-10.

1 creating trial inefficiencies. *See Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997)
 2 (“Confronted with a request for settlement-only class certification, a district court need not inquire
 3 whether the case, if tried, would present intractable management problems ... for the proposal is
 4 that there be no trial.”).

5 Fed. R. Civ. P. 23(b)(3)’s superiority inquiry calls for a comparative analysis of whether a
 6 class action is “superior to other available methods for fair and efficient adjudication of the
 7 controversy.” *Id.* at 615; *see also Wolin v. Jaguar Land Rover N. Am., LLC*, 617 F.3d 1168, 1175
 8 (9th Cir. 2010) (“[T]he purpose of the superiority requirement is to assure that the class action is the
 9 most efficient and effective means of resolving the controversy.”). Class treatment is superior to
 10 other methods for the resolution of this case. Plaintiffs are unaware of any consumers filing
 11 individual actions regarding the issues raised in this case, and the size of each Settlement Class
 12 Member’s individual damages would be dwarfed by the expense of prosecuting an individual case.
 13 *See Just Film, Inc. v. Buono*, 847 F.3d 1108, 1123 (9th Cir. 2017) (class action superior where the
 14 “risks, small recovery, and relatively high costs of litigation make it unlikely that plaintiffs would
 15 individually pursue their claims”) (internal quotation marks omitted). In all events, Settlement
 16 Class Members remain free to exclude themselves if they wish to do so. Moreover, it would be far
 17 more efficient for the Court and the parties to have a single resolution (as with the proposed
 18 Settlement here), rather than multiple separate cases about the same issue.

19 CONCLUSION

20 For the foregoing reasons, Plaintiffs respectfully request that the Court grant final approval
 21 of the proposed Settlement.

22 Dated: May 28, 2021

Respectfully submitted,

24 LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

25 By: /s/ Roger N. Heller

Roger N. Heller (SBN 215348)
 Michael W. Sobol (SBN 194857)
 Daniel E. Seltz (admitted pro hac vice)
 Avery S. Halfon (admitted pro hac vice)
 275 Battery Street, 29th Floor
 San Francisco, CA 94111-3339
 Telephone: 415.956.1000

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Facsimile: 415.956.1008

Alexander H. Schmidt, Esq.
Fairways Professional Plaza
5 Professional Circle, Ste. 204
Colts Neck, New Jersey 07722
Telephone: (732) 226-0004

D. Anthony Mastando
Eric J. Artrip
MASTANDO & ARTRIP, LLC
301 Washington St., Suite 302
Huntsville, AL 35801
Telephone: (256) 532-2222

Daniel M. Hattis (SBN 232141)
HATTIS LAW
Post Office Box 1645
Bellevue, Washington 98009-1645
Telephone: (650) 980-1990
Facsimile: (425) 412-7171

John A. Yanchunis
Jean Martin
MORGAN & MORGAN
201 North Franklin Street
7th Floor
Tampa, Florida 33602
Telephone: (813) 275-5272

Settlement Class Counsel

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA
3 SAN FRANCISCO DIVISION
4
5

6 MARCUS A. ROBERTS, KENNETH A.
7 CHEWEY, AND ASHLEY M. CHEWEY,
8 individually and on behalf of all others similarly
situated,

9 *Plaintiffs,*

10 v.

11 AT&T MOBILITY, LLC,

12 *Defendant.*
13
14

Case No. 3:15-CV-03418-EMC

**DECLARATION OF STEVEN PLATT
OF ANGEION GROUP, LLC
REGARDING SETTLEMENT
ADMINISTRATION**

15 I, Steven Platt, hereby declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that
16 the following is true and correct:

17 1. I am a Project Manager at the class action notice and settlement administration firm
18 Angeion Group, LLC (“Angeion”). I am fully familiar with the facts contained herein based upon
19 my personal knowledge.

20 2. Angeion’s credentials have been previously reported to this Court in previous
21 declarations filed with *Plaintiffs’ Notice of Motion and Motion for Preliminary Approval of Class*
22 *Settlement and Direction of Notice Under Rule 23(E)* (Dkt. No. 200-10) (the “Initial Declaration”)
23 and Notice of Filing Amended Settlement Agreement And Request For Entry Of Preliminary
24 Approval Order (Dkt. No. 204-2) (the “Supplemental Declaration”).

25 3. The purpose of this declaration is to provide the Court with an update on the work
26 performed by Angeion related to the implementation of the Notice Plan and administrative tasks
27 following the Court’s *Order Granting Preliminary Approval of Class Settlement Agreement and*
28

1 *Directing Dissemination of Class Notice*, entered on March 31, 2021 (Dkt. No. 205).

2
3 **CLASS MEMBER LIST**

4 4. On April 8, 2021, Angeion received the Class Data from the Defendant (“Class
5 Member List”). The Class Member List contained: account numbers, names of account holders, the
6 last known address for the account, the last known email address for the account (only some
7 accounts), whether the account is a Group A Account, a Group B Account or both; whether the
8 account is a current or former AT&T account as of the time the Class Member List was provided;
9 and, for current AT&T accounts, whether any of the account holders have opted out of receiving
10 informational SMS message.

11 5. The Class Member List included data for 282,213 accounts in Group A only, 819,047
12 accounts in Group B only, and 459,288 accounts that are in both Group A and Group B. In all, the
13 Class Member List comprised of 1,560,548 unique Class Member Accounts.

14 6. For ease of reference, in the balance of this declaration, I will refer to accounts that
15 are in Group A only as “Group A” accounts, accounts that are in Group B only as “Group B”
16 accounts, and accounts that are in both groups as “Group C” accounts.

17 7. Under the terms of the Amended Settlement Agreement, direct notice is being
18 provided to Settlement Class Members through a combination of email, mailed postcard, and SMS
19 notice. To summarize:

- 20 a. Accounts for which there is an email address in the Class Member List are sent
21 email notice.
- 22 b. Accounts meeting the criteria for SMS notice set forth in the Amended
23 Settlement Agreement are sent SMS notice (by AT&T).
- 24 c. Accounts that meet the criteria for both email and SMS notice receive both email
25 and SMS notice.
- 26 d. Accounts that do not meet the criteria for either email or SMS notice, or for which
27 email or SMS notice is not successfully sent, receive mailed postcard notice.

28 8. Pursuant to the terms of the Amended Settlement Agreement, Angeion analyzed the

Class Member List and processed the email addresses through a software application that validates email addresses. Once this was completed, Angeion categorized the type of Notice by Group to which each Class Member account would be sent notice in the initial dissemination. The table below illustrates the method of initial dissemination for notice to be sent for each Class Member account by Group.

Group	SMS Text Notice Only	Email Notice Only	SMS and Email Notice	Postcard Notice	Total	Percentage
Group A	3,448	164,263	99,037	15,465	282,213	18.08%
Group B	30,958	228,176	524,694	35,219	819,047	52.48%
Group C	9,219	151,587	289,711	8,771	459,288	29.43%
Total	43,625	544,026	913,442	59,455	1,560,548	100.00%
Percentage	2.80%	34.86%	58.53%	3.81%	100.00%	

DISSEMINATION OF CAFA NOTICE

9. On February 8, 2021, as required by 28 U.S.C. § 1715(b), Angeion caused Notice regarding the settlement to be sent to the Attorneys General of all states and territories, as well as the Attorney General of the United States (“CAFA Notice”). The mailings included the items set forth in the CAFA Notice. A copy of the CAFA Notice is attached hereto as Exhibit “1”.

DIRECT NOTICE

10. Angeion processed the 59,455 mailing addresses, for those accounts in Groups A, B, and C to be initially sent postcard notices, through the United States Postal Service (“USPS”) National Change of Address (“NCOA”) database to identify updated address information Class Members who have moved in the last four years and filed a change of address card with the USPS. The NCOA results provided 1,760 Group A Account updated addresses, 4,447 Group B Account updated addresses and 1,101 Group C Account updated addresses. A total of 7,308 updated addresses for the Settlement Class Members were obtained by Angeion and the Class List was updated with these addresses.

11. On May 14, 2021, Angeion caused the Group A Settlement Postcard Notice (“Group A Postcard Notice”) to be mailed to all 15,465 Group A Settlement Class Member addresses via

1 United States Postal Service (“USPS”) first-class mail, postage prepaid. Attached hereto as Exhibit
2 “2” is a copy of the Group A Postcard Notice.

3 12. On May 14, 2021, Angeion caused the Group B Settlement Postcard Notice and
4 Claim Form (collectively “Group B Postcard Notice”) to be mailed to all 35,219 Group B Settlement
5 Class Member addresses via United States Postal Service (“USPS”) first-class mail, postage prepaid.
6 Attached hereto as Exhibit “3” is a copy of the Group B Postcard Notice.

7 13. On May 14, 2021, Angeion caused the Group C Settlement Postcard Notice and
8 Claim Form (collectively “Group C Postcard Notice”) to be mailed to all 8,771 Group C Settlement
9 Class Member addresses via United States Postal Service (“USPS”) first-class mail, postage prepaid.
10 Attached hereto as Exhibit “4” is a copy of the Group C Postcard Notice.

11 14. As of May 25, 2021, the USPS has returned 1,889 of the Postcard Notices initially
12 mailed as undeliverable. Postcard Notices returned as undeliverable by the USPS without a
13 forwarding address will be processed through address verification searches and re-mailed to updated
14 addresses located via this process. Postcard Notices returned as undeliverable by the USPS with a
15 forwarding address will be re-mailed to that forwarding address identified by the USPS.

16 15. On May 14, 2021, Angeion caused the Group A Settlement Email Notice (“Group A
17 Email Notice”) to be sent via email to the 164,263 email addresses contained in the Group A Email
18 Notice Only Group and the 99,037 email addresses contained in the Group A SMS and Email Notice
19 Group. A total of 263,300 Group A Email Notices were disseminated. Of the 263,300 Group A
20 Email Notices sent, 250,518 were successfully delivered and 12,782 were not successfully
21 delivered. Of the 12,782 that were not successfully delivered, 9,590 were hard bounces. Angeion
22 waited 72 hours to allow for the expiration of the rest period of any temporary blocks at the ISP
23 level and re-transmitted a second Group A Email Notice to all 3,192 initially undelivered emails
24 that were not due to hard bounces. Of the 3,192 emails made in the second attempt, 1,738 were
25 successfully delivered and 1,454 were not successfully delivered. In total, of the 263,300 Group A
26 Accounts to which Email Notices were disseminated, 252,256 were successfully delivered and
27 11,044 were not successful. Attached hereto as Exhibit “5” is a copy of the Group A Email Notice.

28 16. On May 14, 2021, Angeion caused the Group B Settlement Email Notice (“Group B

1 Email Notice”) to be sent via email to the 228,176 email addresses contained in the Group B Email
2 Notice Only Group and the 524,694 email addresses contained in the Group B SMS and Email
3 Notice Group. A total of 752,870 Group B Email Notices were disseminated. Of the 752,870 Group
4 B Email Notices sent, 733,469 were successfully delivered and 19,401 were not successfully
5 delivered. Of the 19,401 that were not successfully delivered, 11,806 were hard bounces. Angeion
6 waited 72 hours to allow for the expiration of the rest period of any temporary blocks at the ISP
7 level and re-transmitted a second Group B Email Notice to all 7,595 initially undelivered emails
8 that were not due to hard bounces. Of the 7,595 emails made in the second attempt, 3,844 were
9 successfully delivered and 3,751 were not successfully delivered. In total, of the 752,870 Group B
10 Accounts to which Email Notices were disseminated, 737,313 were successfully delivered and
11 15,557 were not successful. Attached hereto as Exhibit “6” is a copy of the Group B Email Notice.

12 17. On May 14, 2021, Angeion caused the Group C Settlement Email Notice (“Group C
13 Email Notice”) to be sent via email to the 151,587 email addresses contained in the Group C Email
14 Notice Only Group and the 289,711 email addresses contained in the Group C SMS and Email
15 Notice Group. A total of 441,298 Group C Email Notices were disseminated. Of the 441,298 Group
16 A Email Notices sent, 430,324 were successfully delivered and 10,974 were not successfully
17 delivered. Of the 10,974 that were not successfully delivered, 7,158 were hard bounces. Angeion
18 waited 72 hours to allow for the expiration of the rest period of any temporary blocks at the ISP
19 level and re-transmitted a second Group C Email Notice to all 3,816 initially undelivered emails
20 that were not the result of a hard bounce. Of the 3,816 emails made in the second attempt, 2,140
21 were successfully delivered and 1,677 were not successfully delivered. In total, of the 441,298
22 Group C Accounts to which Email Notices were disseminated, 432,464 were successfully delivered
23 and 8,834 were not successful. Attached hereto as Exhibit “7” is a copy of the Group C Email Notice.

24 18. Pursuant to Section VI.3 of the Amended Settlement Agreement, AT&T
25 commenced the dissemination of SMS Notice on May 11, 2021, to the corresponding AT&T cellular
26 telephone number for each Settlement Class account for which the Customer Data identified that
27 both; (1) the account is a current AT&T account and (2) no accountholders for the account have
28 opted out of receiving such messages.

1 19. On May 21, 2021, AT&T provided confirmation to Angeion that 102,616 Group A
2 SMS Notices were transmitted. Of these 102,616 Group A SMS Notices transmitted, 91,736 were
3 successfully delivered and, 10,880 were not successfully delivered.

4 20. On May 21, 2021, AT&T provided confirmation to Angeion that 555,876 Group B
5 SMS Notices were transmitted. Of these 555,876 Group B SMS Notices transmitted, 468,168 were
6 successfully delivered and, 87,708 were not successfully delivered.

7 21. On May 21, 2021, AT&T provided confirmation to Angeion that 299,254 Group C
8 SMS Notices were transmitted. Of these 299,254 Group C SMS Notices transmitted, 263,593 were
9 successfully delivered and, 35,661 were not successfully delivered.

10 22. On May 25, 2021, Angeion commenced the process to disseminate Group A Postcard
11 Notices to the 10,880 for whom the Group A SMS Notice was not successful and the 11,044 for
12 whom the Group A Email Notice was not successful.

13 23. On May 25, 2021, Angeion commenced the process to disseminate Group B Postcard
14 Notices to the 87,708 for whom the Group B SMS Notice was not successful and the 15,557 for
15 whom the Group B Email Notice was not successful.

16 24. On May 25, 2021, Angeion commenced the process to disseminate Group C Postcard
17 Notices to the 35,661 for whom the Group C SMS Notice was not successful and the 8,833 for
18 whom the Group C Email Notice was not successful.

19 25. Angeion intends to send, on May 28, 2021, a reminder email Notice to all Group B
20 and Group C Class Member accounts for which it has a valid email address.

21
22
23 **SOCIAL MEDIA NOTICE**

24 26. On May 21, 2021, Angeion initiated a custom Facebook campaign targeting
25 Settlement Class Members by uploading Class Member email addresses and cellular phone numbers
26 for Group B and C accounts. The Facebook ads contain hyperlinks that link to the corresponding
27 Group email notice website landing pages. Copies of the Facebook ads are attached hereto as Exhibit
28 “8”.

1
2 **CLAIM FORM SUBMISSIONS**

3 32. The deadline for Settlement Class Members to submit a Claim Form is August 13,
4 2021. As of May 25, 2020, Angeion has received a total of 68,576 Claim Form submissions. Of
5 these 68,541 were submitted online through the settlement website and 35 through USPS mail.
6

7 **REQUESTS FOR EXCLUSION**

8 33. The deadline to request exclusion from the settlement is July 14, 2021. As of May
9 25, 2021, Angeion has received 13 timely requests for exclusion.
10

11 **OBJECTIONS TO THE SETTLEMENT**

12 34. The deadline for Settlement Class Members to object is July 14, 2021. As of May
13 25, 2021, Angeion has not received any objections to the settlement.
14

15 **ADMINISTRATION EXPENSES**

16 35. Angeion initially estimated that the cost of the notice program and all administration
17 expense would be between \$300,000 and \$700,000. Angeion currently estimates that the total cost
18 of administration will be approximately \$491,575.
19
20

21 I hereby declare under penalty of perjury that the foregoing is true and correct.

22 Dated: May 26, 2021
23

24 Steven Platt
STEVEN PLATT
25
26
27
28

EXHIBIT 1



1650 Arch Street, Suite 2210
Philadelphia, PA 19103
(p) 215-563-4116
(f) 215-563-8839
www.angeiongroup.com

February 8, 2021

VIA USPS PRORITY MAIL

United States Attorney General &
Appropriate Officials

Re: Notice of Class Action Settlement

In Re: *Marcus A. Roberts, Kenneth A. Chewey, and Ashley M. Chewey, et al. v. AT&T Mobility, LLC.*

Dear Counsel or Official:

Angeion Group, an independent claims administrator, on behalf of the defendant in the action described below, hereby provides your office with this notice under the provisions of the Class Action Fairness Act ("CAFA"), 28 U.S.C. § 1715, to advise you of the following proposed class action settlement:

Case Name: *Marcus A. Roberts, Kenneth A. Chewey, and Ashley M. Chewey, et al. v. AT&T Mobility, LLC.*

Index Number: 3:15-cv-03418-EMC

Jurisdiction: United States District Court for the Northern District of California, San Francisco Division

Date Settlement Filed with Court: January 29, 2021

In accordance with the requirements of 28 U.S.C. § 1715, please find copies of the following documents associated with this action on the enclosed CD-ROM:

1. **28 U.S.C. § 1715(b)(1)-Complaint:** A copy of the Original Class Action Complaint, the Amended Complaint, and, Second Amended Complaint, filed with the Court, are included on the enclosed CD-ROM.
2. **28 U.S.C. § 1715(b)(2)-Notice of Any Scheduled Judicial Hearings:** The Preliminary Approval Hearing is currently scheduled to be held on March 4, 2021.
3. **28 U.S.C. § 1715(b)(3)-Notification to Class Members:** Copies of the proposed *Email Notice A, Email Notice B, Email Notice C, Postcard Notice A, Postcard Notice B, Postcard Notice C, Website Notice, SMS Notice, and Claim Form* filed with the Court on January 29, 2021, are included on the enclosed CD-ROM.
4. **28 U.S.C. § 1715(b)(4)-Class Action Settlement Agreement:** The *Class Action Settlement Agreement*, filed with the Court on January 29, 2021, is included on the enclosed CD-ROM.

5. **28 U.S.C. § 1715(b)(5)-Any Settlement or Other Agreements:** There are no other settlements or other agreements that have been contemporaneously made between class counsel and counsel for the defendant.
6. **28 U.S.C. § 1715(b)(6)-Final Judgment:** As of the date of this CAFA Notice, no Final Judgment or notice of dismissal has been entered in this case. Copies of the *Proposed Order Granting Preliminary Approval Of Class Settlement Agreement And Directing Dissemination Of Class Notice* and the Proposed Final Order And Judgment, filed with the Court on January 29, 2021, are included on the enclosed CD-ROM.
7. **28 U.S.C. § 1715(b)(7)(B)-Estimate of Class Members:** At this time, it is not feasible for Defendant to provide a list of known class member names and their state of residence. Defendant estimates that there are 1,560,548 persons in the class whose last known address is in the state of California.
8. **28 U.S.C. §1715(b)(8): Judicial Opinions Related to the Settlement:** The Court has not issued an Opinion related to this Settlement.

Please contact this office if you have questions or concerns about this notice, the proposed settlement, or the enclosed materials, or if you did not receive any of the above-listed materials.

Sincerely,

Angeion Group
1801 Market Street, Suite 660
Philadelphia, PA 19103
(p) 215-563-4116
(f) 215-563-8839

Enclosures

EXHIBIT 2

**LEGAL NOTICE BY ORDER OF THE
UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT
OF CALIFORNIA**

*A federal court authorized this notice.
This is **not** a solicitation from a lawyer.*

**YOU MAY BE ENTITLED TO A \$10.00
CASH PAYMENT BY CHECK OR BILL
CREDIT FROM A CLASS ACTION
SETTLEMENT IF YOU HAVE OR HAD AN
AT&T UNLIMITED DATA PLAN**

**You do not need to take any action
to receive a payment.**

**Read this notice or visit
www.ATTUnlimitedDataSettlement.com
for more information.**

**Questions? Call (833) 789-0702 or visit
www.ATTUnlimitedDataSettlement.com**

*Para ver este aviso en español, visite
www.ATTUnlimitedDataSettlement.com*

PERSONAL ID: <PERSONAL ID>

PIN: <PIN>

BLIND PERF DOES NOT PRINT



NUMERIC EQUIVALENT

Name/Address Changes:

AT&T Unlimited Data Settlement
c/o Settlement Administrator
1650 Arch Street, Suite 2210
Philadelphia, PA 19103

PRESORTED
FIRST CLASS MAIL
US POSTAGE PAID
MAG

**Electronic Service
Requested**



NUMERIC EQUIVALENT

Postal Service: Please Do Not Mark Barcode

Personal ID: <Personal ID>

<<First Name>> <<Last Name>>

<<Address1>>

<<Address2>>

<<City>>, <<St>> <<Zip>>

<<Country>>

What is this notice about? A proposed settlement has been reached in a class action lawsuit. The lawsuit claimed that AT&T Mobility LLC ("AT&T") advertised wireless data plans as providing unlimited data, but applied inadequately disclosed limits, after which customers' data usage was subjected to throttling or slowing. AT&T denies that it did anything wrong. The settlement, if approved, resolves the case and provides benefits to Settlement Class Members who do not exclude themselves.

Who is included? The "Settlement Class" consists of all consumers residing in California (based on last known billing address) who purchased an unlimited data plan from AT&T and who, on or before March 31, 2021, exceeded AT&T's applicable data usage threshold for any user on the account for one or more monthly billing cycles such that under AT&T's network management policies the user would have been eligible for data slowing or deprioritization. If you received this notice, AT&T's records indicate that you are in the Settlement Class.

What can I get? Under the proposed settlement, AT&T will pay \$12 million to create a settlement fund. If the settlement is approved and becomes final, payments will be issued to eligible account holders. Payment amounts will be based on when each account was subject to AT&T's data slowing policies. Specifically, there are three groups: Group A (accounts subject to slowing only before AT&T adopted "congestion aware throttling" in 2014/2015), Group B (accounts subject to slowing only after AT&T adopted "congestion aware throttling"), and accounts in both Group A and B (accounts subject to slowing during both time periods). AT&T's records indicate your account is in Group A. **You do not need to submit a claim or take any other action to receive a payment. If the settlement becomes final you will be issued a payment by account credit (current customers) or mailed check (former customers).** It is currently estimated the payment amount for your account will be approximately \$10.00, but the final amount may be higher or lower.

What are my options? You can do nothing, receive a payment if the settlement becomes final, and give up the right to sue AT&T about the issues in this lawsuit. You can exclude yourself, receive no payment under this settlement, and retain any right you have to sue AT&T about the issues in this lawsuit. To exclude yourself, mail or email a request

for exclusion containing the information described at www.ATTUnlimitedDataSettlement.com, postmarked or emailed by **JULY 14, 2021**, to: AT&T UNLIMITED DATA SETTLEMENT, ATTN: EXCLUSION REQUESTS, 1650 ARCH ST, STE 2210, PHILADELPHIA, PA 19103, OR INFO@ATTUNLIMITEDDATASETTLEMENT.COM. If you do not exclude yourself, and the Court approves the settlement, you will be bound by the Court's orders and judgments and will release your claims relating to this lawsuit. If you do not exclude yourself, you can object to or comment on the settlement and/or Settlement Class Counsel's request for attorneys' fees, expenses, and service awards for the plaintiffs who brought this case on behalf of the Settlement Class. To object, you must submit a signed, written objection containing the information described at www.ATTUnlimitedDataSettlement.com to the Court and the Settlement Administrator by **JULY 14, 2021**. Visit www.ATTUnlimitedDataSettlement.com for more information.

What happens next? The Court will hold a hearing on **AUGUST 19, 2021, at 1:30 P.M.**, at the United States District Court for the Northern District of California, Courtroom 5, 450 Golden Gate Avenue, San Francisco, CA, 94102, to decide whether to approve the settlement, attorneys' fees and expenses for the attorneys who worked representing the Settlement Class (up to \$3 million to be paid from the \$12 million settlement fund), and service awards of up to \$2,500 to each of the three plaintiffs who brought this case on behalf of the Settlement Class. You or your attorney may ask permission to speak at the hearing at your own cost. The date and time of this hearing may change without further notice, and/or the Court could order that this hearing be held remotely or telephonically. Check www.ATTUnlimitedDataSettlement.com for updates.

Who represents me? The Court has appointed Lief Cabraser Heimann & Bernstein, Hattis Law, Morgan & Morgan, Alexander H. Schmidt, Esq., and Mastando & Artrip to represent the Settlement Class. Together, these lawyers are called Settlement Class Counsel. You do not need to pay these lawyers out of your pocket; instead these lawyers will apply for compensation out of the settlement fund. If you want to be represented by your own lawyer, you may hire one at your own expense.

How do I get more information? For more information, including to view copies of case documents, the full settlement agreement, the complaint in the lawsuit, and Settlement Class Counsel's fee application (once it is filed), visit www.ATTUnlimitedDataSettlement.com. You can also call (833) 789-0702, email Info@ATTUnlimitedDataSettlement.com or contact Settlement Class Counsel at (800) 546-4021.

PLEASE DO NOT CONTACT THE COURT.

BLIND PERF DOES NOT PRINT



Postage
Required
Post Office will
not deliver
without proper
postage.

AT&T UNLIMITED DATA SETTLEMENT
C/O SETTLEMENT ADMINISTRATOR
1650 ARCH ST STE 2210
PHILADELPHIA PA 19103-2041



EXHIBIT 3

**LEGAL NOTICE BY ORDER OF THE
UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT
OF CALIFORNIA**

*A federal court authorized this notice.
This is **not** a solicitation from a lawyer.*

****YOU MAY BE ENTITLED TO A \$13.00
CASH PAYMENT BY CHECK OR BILL
CREDIT IF YOU FILE A CLAIM****

***You must file a claim by AUGUST 13, 2021,
to receive a payment***

**To file a claim or to get more information, visit
www.ATTUnlimitedDataSettlement.com**

**Questions? Call (833) 789-0702 or visit
www.ATTUnlimitedDataSettlement.com**

*Para ver este aviso en español, visite
www.ATTUnlimitedDataSettlement.com*

AT&T Unlimited Data Settlement
c/o Settlement Administrator
1650 Arch Street, Suite 2210
Philadelphia, PA 19103

PRESORTED
FIRST CLASS MAIL
US POSTAGE PAID
MAG

**Electronic Service
Requested**



NUMERIC EQUIVALENT

Postal Service: Please Do Not Mark Barcode

Personal ID: <<Personal ID>>
PIN: <<PIN>>

<<First Name>> <<Last Name>>
<<Address1>>
<<Address2>>
<<City>>, <<St>> <<Zip>>
<<Country>>

PERSONAL ID: <<PERSONAL ID>>

PIN: <<PIN>>

****YOU MAY BE ENTITLED TO A \$13.00 CASH PAYMENT IF YOU FILE A CLAIM****

What is this notice about? A proposed settlement has been reached in a class action lawsuit. The lawsuit claimed that AT&T Mobility LLC (“AT&T”) advertised wireless data plans as providing unlimited data, but applied inadequately disclosed limits, after which customers’ data usage was subjected to throttling or slowing. AT&T denies that it did anything wrong. The settlement, if approved, resolves the case and provides benefits to Settlement Class Members who do not exclude themselves.

Who is included? The “Settlement Class” consists of all consumers residing in California (based on last known billing address) who purchased an unlimited data plan from AT&T and who, on or before March 31, 2021, exceeded AT&T’s applicable data usage threshold for any user on the account for one or more monthly billing cycles such that under AT&T’s network management policies the user would have been eligible for data slowing or deprioritization. If you received this notice, AT&T’s records indicate that you are in the Settlement Class.

What can I get? Under the proposed settlement, AT&T will pay \$12 million to create a settlement fund. If the settlement is approved and becomes final, payments will be issued to eligible account holders. **You must file a claim to receive a payment (see below).** Payment amounts will be based on when each account was subject to AT&T’s data slowing policies. Specifically, there are three groups: Group A (accounts subject to slowing only before AT&T adopted “congestion aware throttling” in 2014/2015), Group B (accounts subject to slowing only after AT&T adopted “congestion aware throttling”), and accounts in both Group A and B (accounts subject to slowing during both time periods). AT&T’s records indicate your account is in Group B.

Blind Perf - Does not print

continued on the other side

CLAIM FORM

To file a claim for a payment, you must complete and file this Claim Form. You can either:

- (1) File Online. File online at www.ATTUnlimitedDataSettlement.com; or
- (2) File by Mail: Fill out, sign, and return this form to: **AT&T Unlimited Data Settlement, c/o Settlement Administrator, 1650 Arch Street, Suite 2210, Philadelphia, PA 19103.**

Important: The deadline to FILE A CLAIM IS AUGUST 13, 2021.



NUMERIC EQUIVALENT

Step 1: Provide Your Contact Information

Your Name _____
Street Address _____
City _____ State _____ ZIP _____
Email Address: _____

Step 2: Confirm That You Had Your Data Speed Slowed

Check the box below to confirm that, to the best of your recollection, you had your AT&T data speed slowed at least once in 2014 or later.
☐ To the best of my recollection, I experienced slowed data speed for my AT&T unlimited wireless service at least once in 2014 or later. **(check box)**

Step 3: Sign the Form

Your Signature

Date

How do I get a payment? You must file a claim by AUGUST 13, 2021, to receive a settlement payment. You can file a claim online at www.ATTUnlimitedDataSettlement.com, or you can submit the attached claim form. If you file a claim by the deadline, it is currently estimated that the payment amount for your account will be approximately \$13.00, but the final amount may be higher or lower. Payments will be issued to valid claimants by account credit (current customers) or mailed check (former customers).

What are my options? You can file a claim, receive a payment if the settlement becomes final, and give up the right to sue AT&T about the issues in this lawsuit. If you do nothing, you will receive no payment and, if the settlement becomes final, you will give up the right to sue AT&T about the issues in this lawsuit. You can exclude yourself, receive no payment under this settlement, and retain any right you have to sue AT&T about the issues in this lawsuit. To exclude yourself, mail or email a request for exclusion containing the information described at www.ATTUnlimitedDataSettlement.com, postmarked or emailed by **JULY 14, 2021**, to: AT&T UNLIMITED DATA SETTLEMENT, ATTN: EXCLUSION REQUESTS, 1650 ARCH ST., STE 2210, PHILADELPHIA, PA 19103, OR INFO@ATTUNLIMITEDDATASETTLEMENT.COM. If you do not exclude yourself, and the Court approves the settlement, you will be bound by the Court’s orders and judgments and will release your claims relating to this lawsuit. If you do not exclude yourself, you can object to or comment on the settlement and/or Settlement Class Counsel’s request for attorneys’ fees, expenses, and service awards for the plaintiffs who brought this case on behalf of the Settlement Class. To object, you must submit a signed, written objection containing the information described at www.ATTUnlimitedDataSettlement.com to the Court and the Settlement Administrator by **JULY 14, 2021**. Visit www.ATTUnlimitedDataSettlement.com for more information.

What happens next? The Court will hold a hearing on **AUGUST 19, 2021 at 1:30 P.M.**, at the United States District Court for the Northern District of California, Courtroom 5, 450 Golden Gate Avenue, San Francisco, CA, 94102, to decide whether to approve the settlement, attorneys’ fees and expenses for the attorneys who worked representing the Settlement Class (up to \$3 million to be paid from the \$12 million settlement fund), and service awards of up to \$2,500 to each of the three plaintiffs who brought this case on behalf of the Settlement Class. You or your attorney may ask permission to speak at the hearing at your own cost. The date and time of this hearing may change without further notice, and/or the Court could order that this hearing be held remotely or telephonically. Check www.ATTUnlimitedDataSettlement.com for updates.

Who represents me? The Court has appointed Lief Cabraser Heimann & Bernstein, Hattis Law, Morgan & Morgan, Alexander H. Schmidt, Esq., and Mastando & Artrip to represent the Settlement Class. Together, these lawyers are called Settlement Class Counsel. You do not need to pay these lawyers out of your pocket; instead these lawyers will apply for compensation out of the settlement fund. If you want to be represented by your own lawyer, you may hire one at your own expense.

How do I get more information? For more information, including to view copies of case documents, the full settlement agreement, the complaint in the lawsuit, and Settlement Class Counsel’s fee application (once it is filed), visit www.ATTUnlimitedDataSettlement.com. You can also call (833) 789-0702, email Info@ATTUnlimitedDataSettlement.com or contact Settlement Class Counsel at (800) 546-4021.

PLEASE DO NOT CONTACT THE COURT.

Blind Perf - Does not print

Postage
Required
Post Office will
not deliver
without proper
postage.

AT&T UNLIMITED DATA SETTLEMENT
C/O SETTLEMENT ADMINISTRATOR
1650 ARCH ST STE 2210
PHILADELPHIA PA 19103-2041



EXHIBIT 4

**LEGAL NOTICE BY ORDER OF THE
UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF
CALIFORNIA**

*A federal court authorized this notice. This is not
a solicitation from a lawyer.*

****YOU MAY BE ENTITLED TO A \$23.00
CASH PAYMENT BY CHECK OR BILL
CREDIT IF YOU FILE A CLAIM****

***You must file a claim by AUGUST 13, 2021,
to receive all payments you qualify for***

**To file a claim or to get more information, visit
www.ATTUnlimitedDataSettlement.com**

**Questions? Call (833) 789-0702 or visit
www.ATTUnlimitedDataSettlement.com**

*Para ver este aviso en español, visite
www.ATTUnlimitedDataSettlement.com*

AT&T Unlimited Data Settlement
c/o Settlement Administrator
1650 Arch Street, Suite 2210
Philadelphia, PA 19103

PRESORTED
FIRST CLASS MAIL
US POSTAGE PAID
MAG

**Electronic Service
Requested**



NUMERIC EQUIVALENT

Postal Service: Please Do Not Mark Barcode

Personal ID: <<Personal ID>>
PIN: <<PIN>>

<<First Name>> <<Last Name>>
<<Address1>>
<<Address2>>
<<City>>, <<St>> <<Zip>>
<<Country>>

PERSONAL ID: <<PERSONAL ID>>

PIN: <<PIN>>

****YOU MAY BE ENTITLED TO A \$23.00 CASH PAYMENT IF YOU FILE A CLAIM****

What is this notice about? A proposed settlement has been reached in a class action lawsuit. The lawsuit claimed that AT&T Mobility LLC (“AT&T”) advertised wireless data plans as providing unlimited data, but applied inadequately disclosed limits, after which customers’ data usage was subjected to throttling or slowing. AT&T denies that it did anything wrong. The settlement, if approved, resolves the case and provides benefits to Settlement Class Members who do not exclude themselves.

Who is included? The “Settlement Class” consists of all consumers residing in California (based on last known billing address) who purchased an unlimited data plan from AT&T and who, on or before March 31, 2021, exceeded AT&T’s applicable data usage threshold for any user on the account for one or more monthly billing cycles such that under AT&T’s network management policies the user would have been eligible for data slowing or deprioritization. If you received this notice, AT&T’s records indicate that you are in the Settlement Class.

What can I get? Under the proposed settlement, AT&T will pay \$12 million to create a settlement fund. If the settlement is approved and becomes final, payments will be issued to eligible account holders. **You must file a claim to receive all payments you qualify for (see below).** Payment amounts will be based on when each account was subject to AT&T’s data slowing policies. Specifically, there are three groups: Group A (accounts subject to slowing only before AT&T adopted “congestion aware throttling” in 2014/2015), Group B (accounts subject to slowing only after AT&T adopted “congestion aware throttling”), and accounts in both Group A and B (accounts subject to slowing during both time periods). AT&T’s records indicate your account is in both Group A and Group B.

Blind Perf - Does not print

continued on the other side

CLAIM FORM

To file a claim for a payment, you must complete and file this Claim Form. You can either:

- (1) **File Online.** File online at www.ATTUnlimitedDataSettlement.com; or
- (2) **File by Mail:** Fill out, sign, and return this form to: **AT&T Unlimited Data Settlement, c/o Settlement Administrator, 1650 Arch Street, Suite 2210, Philadelphia, PA 19103.**

Important: The deadline to FILE A CLAIM IS AUGUST 13, 2021.



NUMERIC EQUIVALENT

Step 1: Provide Your Contact Information

Your Name _____
Street Address _____
City _____ State _____ ZIP _____
Email Address: _____

Step 2: Confirm That You Had Your Data Speed Slowed

Check the box below to confirm that, to the best of your recollection, you had your AT&T data speed slowed at least once in 2014 or later.

☐ To the best of my recollection, I experienced slowed data speed for my AT&T unlimited wireless service at least once in 2014 or later. **(check box)**

Step 3: Sign the Form

Your Signature

Date

How do I get a payment? You must file a claim by AUGUST 13, 2021 to receive all payments you qualify for. You can file a claim online at www.ATTUnlimitedDataSettlement.com or submit the attached claim form. If you file a claim by the deadline, it is currently estimated that the payment amount for your account will be approximately \$23.00. If you do not file a claim by the deadline, it is currently estimated that the payment amount for your account will be approximately \$10.00. The final amounts may be higher or lower. Payments will be issued to valid claimants by account credit (current customers) or mailed check (former customers).

What are my options? You can do nothing, receive a payment if the settlement becomes final (but not the full payment you qualify for, which requires you to file a claim; see above), and give up the right to sue AT&T about the issues in this lawsuit. If you file a valid claim and the settlement becomes final, you will receive a higher total payment and give up the same rights. You can exclude yourself, receive no payment under this settlement, and retain any right you have to sue AT&T about the issues in this lawsuit. To exclude yourself, mail or email a request for exclusion containing the information described at www.ATTUnlimitedDataSettlement.com, postmarked or emailed by **JULY 14, 2021**, to: AT&T UNLIMITED DATA SETTLEMENT, ATTN: EXCLUSION REQUESTS, 1650 ARCH ST., STE 2210, PHILADELPHIA, PA 19103, OR INFO@ATTUNLIMITEDDATASETTLEMENT.COM. If you do not exclude yourself, and the Court approves the settlement, you will be bound by the Court's orders and judgments and will release your claims relating to this lawsuit. If you do not exclude yourself, you can object to or comment on the settlement and/or Settlement Class Counsel's request for attorneys' fees, expenses, and service awards for the plaintiffs who brought this case on behalf of the Settlement Class. To object, you must submit a signed, written objection containing the information described at www.ATTUnlimitedDataSettlement.com to the Court and the Settlement Administrator by **JULY 14, 2021**. Visit www.ATTUnlimitedDataSettlement.com for more information.

What happens next? The Court will hold a hearing on **AUGUST 19, 2021, at 1:30 P.M.**, at the United States District Court for the Northern District of California, Courtroom 5, 450 Golden Gate Avenue, San Francisco, CA, 94102, to decide whether to approve the settlement, attorneys' fees and expenses for the attorneys who worked representing the Settlement Class (up to \$3 million to be paid from the \$12 million settlement fund), and service awards of up to \$2,500 to each of the three plaintiffs who brought this case on behalf of the Settlement Class. You or your attorney may ask permission to speak at the hearing at your own cost. The date and time of this hearing may change without further notice, and/or the Court could order that this hearing be held remotely or telephonically. Check www.ATTUnlimitedDataSettlement.com for updates.

Who represents me? The Court has appointed Lief Cabraser Heimann & Bernstein, Hattis Law, Morgan & Morgan, Alexander H. Schmidt, Esq., and Mastando & Artrip to represent the Settlement Class. Together, these lawyers are called Settlement Class Counsel. You do not need to pay these lawyers out of your pocket; instead these lawyers will apply for compensation out of the settlement fund. If you want to be represented by your own lawyer, you may hire one at your own expense.

How do I get more information? For more information, including to view copies of case documents, the full settlement agreement, the complaint in the lawsuit, and Settlement Class Counsel's fee application (once it is filed), visit www.ATTUnlimitedDataSettlement.com. You can also call (833) 789-0702, email Info@ATTUnlimitedDataSettlement.com or contact Settlement Class Counsel at (800) 546-4021.

PLEASE DO NOT CONTACT THE COURT.

Blind Perf - Does not print



Postage
 Required
 Post Office will
 not deliver
 without proper
 postage.

AT&T UNLIMITED DATA SETTLEMENT
 C/O SETTLEMENT ADMINISTRATOR
 1650 ARCH ST STE 2210
 PHILADELPHIA PA 19103-2041



EXHIBIT 5

PERSONAL ID: #####

PIN: ####

**LEGAL NOTICE BY ORDER OF THE UNITED STATES
DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA**

*A federal court authorized this notice. This is **not** a solicitation from a lawyer. You are not being sued.*

**YOU MAY BE ENTITLED TO A \$10.00 CASH PAYMENT
(BY CHECK OR BILL CREDIT) FROM A CLASS ACTION
SETTLEMENT IF YOU HAVE OR HAD AN
AT&T UNLIMITED DATA PLAN**

**You do not need to take any action to receive a
payment. Read this notice or visit
www.ATTUnlimitedDataSettlement.com or call
(833) 789-0702 for more information.**

*Para ver este aviso en español, visite
www.ATTUnlimitedDataSettlement.com*

What is this notice about? A proposed settlement has been reached in a class action lawsuit. The lawsuit claimed that AT&T Mobility LLC ("AT&T") advertised wireless data plans as providing unlimited data, but applied inadequately disclosed limits, after which customers' data usage was subjected to throttling or slowing. AT&T denies that it did anything wrong. The settlement, if approved, resolves the case and provides benefits to Settlement Class Members who do not exclude themselves.

Who is included? The "Settlement Class" consists of all consumers residing in California (based on last known billing address) who purchased an unlimited data plan from AT&T and who, before MARCH 31, 2021, exceeded AT&T's applicable data usage threshold for any user on the account for one or more monthly billing cycles such that under AT&T's network management policies the user would have been eligible

for data slowing or deprioritization. If you received this notice, AT&T's records indicate that you are in the Settlement Class.

What can I get? Under the proposed settlement, AT&T will pay \$12 million to create a settlement fund. If the settlement is approved and becomes final, payments will be issued to eligible account holders. Payment amounts will be based on when each account was subject to AT&T's data slowing policies. Specifically, there are three groups: Group A (accounts subject to slowing only before AT&T adopted "congestion aware throttling" in 2014/2015), Group B (accounts subject to slowing only after AT&T adopted "congestion aware throttling"), and accounts in both Group A and B (accounts subject to slowing during both time periods). AT&T's records indicate your account is in Group A. **You do not need to submit a claim or take any other action to receive a payment. If the settlement becomes final you will be issued a payment by account credit (current customers) or mailed check (former customers).** It is currently estimated the payment amount for your account will be approximately \$10.00, but the final amount may be higher or lower.

What are my options? You can do nothing, receive a payment if the settlement becomes final, and give up the right to sue AT&T about the issues in this lawsuit. You can exclude yourself, receive no payment under this settlement, and retain any right you have to sue AT&T about the issues in this lawsuit. To exclude yourself, mail or email a request for exclusion containing the information described at www.ATTUnlimitedDataSettlement.com, postmarked or emailed by **JULY 14, 2021**, to: AT&T UNLIMITED DATA SETTLEMENT, ATTN: EXCLUSION REQUESTS, 1650 ARCH STREET, SUITE 2210, PHILADELPHIA, PA 19103, OR INFO@ATTUNLIMITEDDATASETTLEMENT.COM. If you do not exclude yourself, and the Court approves the settlement, you will be bound by the Court's orders and judgments and will release your claims relating to this lawsuit. If you do not exclude yourself, you can object to or comment on the settlement and/or Settlement Class Counsel's request for attorneys' fees, expenses, and service awards for the plaintiffs who brought this case on behalf of the Settlement Class. To object, you must submit a signed, written objection containing the information described at www.ATTUnlimitedDataSettlement.com to the Court and the

Settlement Administrator by **JULY 14, 2021.** Visit www.ATTUnlimitedDataSettlement.com for more information.

What happens next? The Court will hold a hearing on **AUGUST 19, 2021, at 1:30 P.M.**, at the United States District Court for the Northern District of California, Courtroom 5, 450 Golden Gate Avenue, San Francisco, CA, 94102, to decide whether to approve the settlement, attorneys' fees and expenses for the attorneys who worked representing the Settlement Class (up to \$3 million to be paid from the \$12 million settlement fund), and service awards of up to \$2,500 to each of the three plaintiffs who brought this case on behalf of the Settlement Class. You or your attorney may ask permission to speak at the hearing at your own cost. The date and time of this hearing may change without further notice, and/or the Court could order that this hearing be held remotely or telephonically. Check www.ATTUnlimitedDataSettlement.com for updates.

Who represents me? The Court has appointed Lieff Cabraser Heimann & Bernstein, Hattis Law, Morgan & Morgan, Alexander H. Schmidt, Esq., and Mastando & Artrip to represent the Settlement Class. Together, these lawyers are called Settlement Class Counsel. You do not need to pay these lawyers out of your pocket; instead these lawyers will apply for compensation out of the settlement fund. If you want to be represented by your own lawyer, you may hire one at your own expense.

How do I get more information? For more information, including to view copies of case documents, the full settlement agreement, the complaint in the lawsuit, and Settlement Class Counsel's fee application (once it is filed), visit www.ATTUnlimitedDataSettlement.com. You can also call (833) 789-0702, email Info@ATTUnlimitedDataSettlement.com or contact Settlement Class Counsel at (800) 546-4021.

PLEASE DO NOT CONTACT THE COURT

EXHIBIT 6

PERSONAL ID: #####

PIN: ####

****YOU MAY BE ENTITLED TO A \$13.00 CASH PAYMENT BY CHECK OR BILL CREDIT IF YOU FILE A CLAIM****

**LEGAL NOTICE BY ORDER OF THE UNITED STATES
DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA**

*A federal court authorized this notice. This is **not** a solicitation from a lawyer. You are not being sued.*

You must file a claim by AUGUST 13, 2021, to receive a payment

To file a claim click here

**Read this notice or visit
www.ATTUnlimitedDataSettlement.com or call
(833) 789-0702 for more information.**

*Para ver este aviso en español, visite
www.ATTUnlimitedDataSettlement.com*

What is this notice about? A proposed settlement has been reached in a class action lawsuit. The lawsuit claimed that AT&T Mobility LLC ("AT&T") advertised wireless data plans as providing unlimited data, but applied inadequately disclosed limits, after which customers' data usage was subjected to throttling or slowing. AT&T denies that it did anything wrong. The settlement, if approved, resolves the case and provides benefits to Settlement Class Members who do not exclude themselves.

Who is included? The "Settlement Class" consists of all consumers residing in California (based on last known billing address) who purchased an unlimited data plan from AT&T and who, before MARCH 31, 2021, exceeded AT&T's applicable data usage threshold for any user

on the account for one or more monthly billing cycles such that under AT&T's network management policies the user would have been eligible for data slowing or deprioritization. If you received this notice, AT&T's records indicate that you are in the Settlement Class.

What can I get? Under the proposed settlement, AT&T will pay \$12 million to create a settlement fund. If the settlement is approved and becomes final, payments will be issued to eligible account holders. **You must file a claim to receive a payment (see below).** Payment amounts will be based on when each account was subject to AT&T's data slowing policies. Specifically, there are three groups: Group A (accounts subject to slowing only before AT&T adopted "congestion aware throttling" in 2014/2015), Group B (accounts subject to slowing only after AT&T adopted "congestion aware throttling"), and accounts in both Group A and B (accounts subject to slowing during both time periods). AT&T's records indicate your account is in Group B.

How do I get a payment? **You must file a claim by AUGUST 13, 2021, to receive a settlement payment.** You can file a claim online by clicking [here](https://www.ATTUnlimitedDataSettlement.com) or you can download a claim form at www.ATTUnlimitedDataSettlement.com, fill it out, and submit it by mail. If you file a claim by the deadline, it is currently estimated that the payment amount for your account will be approximately \$13.00, but the final amount may be higher or lower. Payments will be issued to valid claimants by account credit (current customers) or mailed check (former customers).

What are my options? You can file a claim, receive a payment if the settlement becomes final, and give up the right to sue AT&T about the issues in this lawsuit. If you do nothing, you will receive no payment and, if the settlement becomes final, you will give up the right to sue AT&T about the issues in this lawsuit. You can exclude yourself, receive no payment under this settlement, and retain any right you have to sue AT&T about the issues in this lawsuit. To exclude yourself, mail or email a request for exclusion containing the information described at www.ATTUnlimitedDataSettlement.com, postmarked or emailed by **JULY 14, 2021**, to: AT&T UNLIMITED DATA SETTLEMENT, ATTN: EXCLUSION REQUESTS, 1650 ARCH STREET, SUITE 2210, PHILADELPHIA, PA 19103, OR

INFO@ATTUNLIMITEDDATASETTLEMENT.COM. If you do not exclude yourself, and the Court approves the settlement, you will be bound by the Court's orders and judgments and will release your claims relating to this lawsuit. If you do not exclude yourself, you can object to or comment on the settlement and/or Settlement Class Counsel's request for attorneys' fees, expenses, and service awards for the plaintiffs who brought this case on behalf of the Settlement Class. To object, you must submit a signed, written objection containing the information described at www.ATTUnlimitedDataSettlement.com to the Court and the Settlement Administrator by **JULY 14, 2021**. Visit www.ATTUnlimitedDataSettlement.com for more information.

What happens next? The Court will hold a hearing on **AUGUST 19, 2021, at 1:30 P.M.**, at the United States District Court for the Northern District of California, Courtroom 5, 450 Golden Gate Avenue, San Francisco, CA, 94102, to decide whether to approve the settlement, attorneys' fees and expenses for the attorneys who worked representing the Settlement Class (up to \$3 million to be paid from the \$12 million settlement fund), and service awards of up to \$2,500 to each of the three plaintiffs who brought this case on behalf of the Settlement Class. You or your attorney may ask permission to speak at the hearing at your own cost. The date and time of this hearing may change without further notice, and/or the Court could order that this hearing be held remotely or telephonically. Check www.ATTUnlimitedDataSettlement.com for updates.

Who represents me? The Court has appointed Lieff Cabraser Heimann & Bernstein, Hattis Law, Morgan & Morgan, Alexander H. Schmidt, Esq., and Mastando & Artrip to represent the Settlement Class. Together, these lawyers are called Settlement Class Counsel. You do not need to pay these lawyers out of your pocket; instead these lawyers will apply for compensation out of the settlement fund. If you want to be represented by your own lawyer, you may hire one at your own expense.

How do I get more information? For more information, including to view copies of case documents, the full settlement agreement, the complaint in the lawsuit, and Settlement Class Counsel's fee application (once it is filed), visit www.ATTUnlimitedDataSettlement.com. You can

also call (833) 789-0702, email Info@ATTUnlimitedDataSettlement.com or contact Settlement Class Counsel at (800) 546-4021.

PLEASE DO NOT CONTACT THE COURT

EXHIBIT 7

PERSONAL ID: #####

PIN: ####

****YOU MAY BE ENTITLED TO A \$23.00 CASH PAYMENT
BY CHECK OR BILL CREDIT IF YOU FILE A CLAIM****

**LEGAL NOTICE BY ORDER OF THE UNITED STATES
DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA**

*A federal court authorized this notice. This is **not** a
solicitation from a lawyer. You are not being sued.*

***You must file a claim by AUGUST 13, 2021, to receive
all payments you qualify for***

To file a claim, click here

**Read this notice or visit
www.ATTUnlimitedDataSettlement.com or call
(833) 789-0702 for more information.**

*Para ver este aviso en español, visite
www.ATTUnlimitedDataSettlement.com*

What is this notice about? A proposed settlement has been reached in a class action lawsuit. The lawsuit claimed that AT&T Mobility LLC ("AT&T") advertised wireless data plans as providing unlimited data, but applied inadequately disclosed limits, after which customers' data usage was subjected to throttling or slowing. AT&T denies that it did anything wrong. The settlement, if approved, resolves the case and provides benefits to Settlement Class Members who do not exclude themselves.

Who is included? The "Settlement Class" consists of all consumers residing in California (based on last known billing address) who purchased an unlimited data plan from AT&T and who, before MARCH 31, 2021, exceeded AT&T's applicable data usage threshold for any user

on the account for one or more monthly billing cycles such that under AT&T's network management policies the user would have been eligible for data slowing or deprioritization. If you received this notice, AT&T's records indicate that you are in the Settlement Class.

What can I get? Under the proposed settlement, AT&T will pay \$12 million to create a settlement fund. If the settlement is approved and becomes final, payments will be issued to eligible account holders. **You must file a claim to receive all payments you qualify for (see below).** Payment amounts will be based on when each account was subject to AT&T's data slowing policies. Specifically, there are three groups of accounts: Group A (accounts subject to slowing only before AT&T adopted "congestion aware throttling" in 2014/2015), Group B (accounts subject to slowing only after AT&T adopted "congestion aware throttling"), and accounts in both Group A and B (accounts subject to slowing during both time periods). AT&T's records indicate your account is in both Group A and Group B.

How can I get a payment? **You must file a claim by AUGUST 13, 2021, to receive all payments you qualify for.** **You can file a claim online by clicking [here](#) or you can download a claim form at www.ATTUnlimitedDataSettlement.com, fill it out, and submit it by mail.** If you file a claim by the deadline, it is currently estimated that the payment amount for your account will be approximately \$23.00. If you do not file a claim by the deadline, it is currently estimated that the payment amount for your account will be approximately \$10.00. The final amounts may be higher or lower. Payments will be issued to valid claimants by account credit (current customers) or mailed check (former customers).

What are my options? You can do nothing, receive a payment if the settlement becomes final (but not the full payment you qualify for, which requires you to file a claim; see above), and give up the right to sue AT&T about the issues in this lawsuit. If you file a valid claim and the settlement becomes final, you will receive a higher total payment and give up the same rights. You can exclude yourself, receive no payment under this settlement, and retain any right you have to sue AT&T about the issues in this lawsuit. To exclude yourself, mail or email a request for exclusion containing the information described at

www.ATTUnlimitedDataSettlement.com, postmarked or emailed by **JULY 14, 2021**, to: AT&T UNLIMITED DATA SETTLEMENT, ATTN: EXCLUSION REQUESTS, 1650 ARCH STREET, SUITE 2210, PHILADELPHIA, PA 19103, OR INFO@ATTUNLIMITEDDATASETTLEMENT.COM. If you do not exclude yourself, and the Court approves the settlement, you will be bound by the Court's orders and judgments and will release your claims relating to this lawsuit. If you do not exclude yourself, you can object to or comment on the settlement and/or Settlement Class Counsel's request for attorneys' fees, expenses, and service awards for the plaintiffs who brought this case on behalf of the Settlement Class. To object, you must submit a signed, written objection containing the information described at www.ATTUnlimitedDataSettlement.com to the Court and the Settlement Administrator by **JULY 14, 2021**. Visit www.ATTUnlimitedDataSettlement.com for more information.

What happens next? The Court will hold a hearing on **AUGUST 19, 2021, at 1:30 P.M.**, at the United States District Court for the Northern District of California, Courtroom 5, 450 Golden Gate Avenue, San Francisco, CA, 94102, to decide whether to approve the settlement, attorneys' fees and expenses for the attorneys who worked representing the Settlement Class (up to \$3 million to be paid from the \$12 million settlement fund), and service awards of up to \$2,500 to each of the three plaintiffs who brought this case on behalf of the Settlement Class. You or your attorney may ask permission to speak at the hearing at your own cost. The date and time of this hearing may change without further notice, and/or the Court could order that this hearing be held remotely or telephonically. Check www.ATTUnlimitedDataSettlement.com for updates.

Who represents me? The Court has appointed Lieff Cabraser Heimann & Bernstein, Hattis Law, Morgan & Morgan, Alexander H. Schmidt, Esq., and Mastando & Artrip to represent the Settlement Class. Together, these lawyers are called Settlement Class Counsel. You do not need to pay these lawyers out of your pocket; instead these lawyers will apply for compensation out of the settlement fund. If you want to be represented by your own lawyer, you may hire one at your own expense.

How do I get more information? For more information, including to view copies of case documents, the full settlement agreement, the complaint in the lawsuit, and Settlement Class Counsel's fee application (once it is filed), visit www.ATTUnlimitedDataSettlement.com. You can also call (833) 789-0702, email Info@ATTUnlimitedDataSettlement.com or contact Settlement Class Counsel at (800) 546-4021.

PLEASE DO NOT CONTACT THE COURT

EXHIBIT 8



Angeion Group

Sponsored · 

...

California residents who have or used to have an AT&T unlimited data plan and experienced slowed data speeds may be eligible for payment from a class action settlement. Click Learn More below and submit your claim by August 13:



ATTUNLIMITEDDATASETTLEMENT.COM

AT&T Unlimited Data Settlement

\$12 Million Settlement for California residents wh...

[Learn More](#)

 Like

 Comment

 Share



Angeion Group

Sponsored · 



California residents who have or used to have an AT&T unlimited data plan and experienced slowed data speeds may be eligible for payment from a class action settlement. Click [Learn More](#) below and submit your claim by August 13:



ATTUNLIMITEDDATASETTLEMENT.COM

AT&T Unlimited Data Settlement

\$12 Million Settlement for California residents wh...

[Learn More](#)



Like



Comment



Share