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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

STEVEN MCARDLE,

Plaintiff,

v.

AT&T MOBILITY LLC, et al.,

Defendants.

Case No. 4:09-cv-01117-CW

[PROPOSED] ORDER GRANTING FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT AND MOTION FOR
ATTORNEYS' FEES

(Re: Dkt. Nos. 403, 406)

Plaintiff Steven McArdle (Class Representative) moves for final approval of a proposed class action settlement with Defendants AT&T Mobility LLC, New Cingular Wireless PCS LLC, and New Cingular Wireless Services, Inc. (collectively, Defendants), the terms and conditions of which are set forth in the Settlement Agreement filed with the Court on November 4, 2020 (Settlement Agreement), Docket No. 395-1, Ex. 1.¹ Also pending before the Court is Plaintiff's motion for an award of attorneys' fees and costs. For the reasons described more fully below, the Court GRANTS final approval of the Settlement Agreement and GRANTS the motion for attorneys' fees and costs.

¹ Capitalized terms herein have the same meaning as set forth in the Settlement Agreement.

1
2 PROCEDURAL HISTORY

3 This case concerns the charging of international roaming
4 fees for unanswered incoming calls to the U.S.-based mobile
5 numbers of California residents from February 6, 2005, to January
6 31, 2009 (Class Period). The procedural history is summarized in
7 the Order Granting Preliminary Approval, Docket No. 402. Much of
8 the litigation centered on the enforceability of Defendants'
9 arbitration provision, which led to several Ninth Circuit appeals
10 and a petition for certiorari. In the end, the arbitration
11 provision was held unenforceable with respect to the claims in
12 this case.

13 During the pendency of the case, AT&T also made a relevant
14 change to its practices: it completed implementation of a
15 technology called Voicemail Call Completion (VMCC), which routes
16 unanswered calls to the customer's U.S.-based voicemail without
17 connecting through the foreign carrier's switch even when the
18 customer was roaming internationally, thus reducing the incidence
19 of international roaming charges.

20 SUMMARY OF SETTLEMENT TERMS

21 Under the Settlement Agreement, Defendants agreed to add
22 text materially similar to the following to the international
23 roaming section of Defendants' Wireless Customer Agreement:
24 "International roaming rates apply to incoming and outgoing
25 calls, messages, and data use while you're located outside the
26 United States, Puerto Rico, or the U.S. Virgin Islands. In some
27 countries, you may be charged international roaming rates even
28 for calls that you do not answer." Defendants have the right to
make revisions to these disclosures provided that the revised

1 text is clear, accurate, complete, and non-misleading.
2 Defendants also have the right to revise their wireless customer
3 agreement in a manner that is consistent with any prospective
4 changes to federal and California law. The right to make
5 revisions includes the right to remove these disclosures if
6 customers cannot be charged international roaming rates for calls
7 that are not answered.

8 Class Members are persons in the previously certified class
9 comprised of: "All California residents who, any time between
10 February 6, 2005, and January 31, 2009, were charged
11 international roaming fees by Defendants for unanswered incoming
12 calls to their U.S.-based mobile numbers."² The Settlement
13 Agreement provides the ability for Class Members to file a claim.
14 Each current customer Class Member shall automatically receive a
15 Day Pass, unless he or she elects to submit a Valid Claim for an
16 Account Credit in lieu of a Day Pass. Former customer Class
17 Members may submit a Valid Claim for a Cash Refund. The maximum
18 Account Credit or Cash Refund available per Class Member is
19 \$50.00.

20 The Settlement Agreement also provides that Plaintiff's
21 counsel may seek an award of up to \$6,130,000.00 in attorneys'
22

23 ² Excluded from the Class are (a) Senior District Judge Claudia
24 Wilken, the Honorable Maria-Elena James (Ret. Mag. Judge),
25 Magistrate Judge Thomas S. Hixson, Magistrate Judge Sallie Kim,
26 and the Honorable Edward Infante (Ret. Mag. Judge), as well as
27 any member of their immediate families; (b) any government
28 entity; (c) any entity in which any Defendant has a controlling
interest; (d) any of Defendants' subsidiaries, parents,
affiliates, and officers, directors, employees, legal
representatives, heirs, successors, or assigns; (e) counsel for
the Parties; and (f) any persons who timely opt-out of the Class.

1 fees and costs, and up to \$15,000 as an incentive award for the
2 Class Representative.

3 NOTICE AND SETTLEMENT ADMINISTRATION

4 The Settlement Agreement is being administered by KCC (the
5 Claims Administrator). Following the Court's preliminary
6 approval order, the Claims Administrator established a settlement
7 website (the Settlement Website) at
8 <http://www.internationalroamingsettlement.com>, which contained
9 the settlement notices, including the procedures for Class
10 Members to submit claims or exclude themselves, a contact
11 information page that includes address and telephone numbers for
12 the Claims Administrator and the Parties, the Settlement
13 Agreement, the signed order of preliminary approval, online and
14 printable versions of the claim form and the opt-out forms, and
15 answers to frequently asked questions. In addition, the papers
16 in support of final approval and the application for attorneys'
17 fees, costs, and an incentive award were placed on the website
18 after they were filed. The Claims Administrator also operated a
19 toll-free number for class member inquiries.

20 A list of approximately 254,000 Class Members was prepared
21 by searching AT&T billing table records for all one-minute calls
22 between February 6, 2005, and January 31, 2009, that were billed
23 at an international roaming rate to customers with a California
24 billing address. Notice of the Settlement Agreement was provided
25 to Class Members as follows: (1) Email Notice via electronic mail
26 to each Class Member for which Defendants provided or the Claim
27 Administrator obtained an email address; and (2) mailed notice to
28 every other Class Member.

1 In total, the notice program is estimated to have reached in
2 excess of ninety-five percent (95%) of Class Members, an average
3 of two times each. Docket No. 405 ¶¶ 6-15.

4 Class members were given until February 19, 2021, to object
5 to or exclude themselves from the Settlement Agreement. A total
6 of 21,933 claims were received by the Claims Administrator. Id.
7 ¶ 17. Of these, 6,024 claims were preliminary deemed valid. Id.
8 The filers of claims that were preliminarily rejected will be
9 sent deficiency notices (via email) and provided an opportunity
10 to establish that they are Class Members and are eligible for
11 recovery under the Settlement Agreement. Id. ¶ 18.

12 ANALYSIS

13 I. JURISDICTION

14 This Court has subject matter jurisdiction under 28 U.S.C.
15 § 1332 (d) (2).

16 II. NOTICE AND CLAIMS ADMINISTRATION

17 The Notice Plan requires direct notice to Class Members.
18 In particular, Class Notice was provided via: (1) direct Email
19 Notice three times to those Class Members for whom an email
20 address was available; and (2) direct Postcard Notice mailed, as
21 updated by the National Change of Address Database, to those
22 Class Members for whom a physical mailing address was available
23 but an email address was not available. Docket No. 405 ¶¶ 6-15.

24 In light of the foregoing, the Court reaffirms the finding
25 it made in its order granting preliminary approval that the
26 Notice Plan provided the best practicable notice to the members
27 of the Class and satisfied the requirements of due process. See,
28 e.g., Ellison v. Madden, Ltd., No. CV115935PSGAGR, 2013 U.S.

1 Dist. LEXIS 202269, at *3 (C.D. Cal. May 7, 2013) (approving a
2 notice plan reaching seventy-seven percent of class members); In
3 re: Whirlpool Corp. Front-Loading Washer Prod. Liab. Litig.,
4 No. 1:08-WP-65000, 2016 U.S. Dist. LEXIS 130467, at *9 (N.D. Ohio
5 Sept. 23, 2016) (approving notice plan reaching approximately
6 seventy-seven percent of class members).

7 III. FINAL APPROVAL OF SETTLEMENT AGREEMENT

8 A court may approve a proposed class action settlement of a
9 certified class only "after a hearing and on finding that it is
10 fair, reasonable, and adequate after considering whether: (A) the
11 class representatives and class counsel have adequately
12 represented the class; (B) the proposal was negotiated at arm's
13 length; (C) the relief provided for the class is adequate, taking
14 into account: (i) the costs, risks, and delay of trial and
15 appeal; (ii) the effectiveness of any proposed method of
16 distributing relief to the class, including the method of
17 processing class-member claims; (iii) the terms of any proposed
18 award of attorneys' fees, including timing of payment; and (iv)
19 any agreement required to be identified under Rule 23(e)(3); and
20 (D) the proposal treats class members equitably relative to each
21 other." Fed. R. Civ. P. 23(e)(2).³ In reviewing the Settlement

22 _____
23 ³ Prior to the amendments to Rule 23, which took effect December
24 1, 2018, the Ninth Circuit had enumerated a similar list of
25 factors to consider in evaluating a proposed class settlement.
26 See Churchill Vill., L.L.C. v. Gen. Elec., 361 F.3d 566, 575 (9th
27 Cir. 2004) (enumerating the following factors: "(1) the strength
28 of the plaintiffs' case; (2) the risk, expense, complexity, and
likely duration of further litigation; (3) the risk of
maintaining class action status throughout the trial; (4) the
amount offered in settlement; (5) the extent of discovery
completed and the stage of the proceedings; (6) the experience
and views of counsel; (7) the presence of a governmental
participant; and (8) the reaction of the class members to the

1 Agreement, the Court need not address whether the settlement is
2 ideal or the best outcome; instead, it must determine whether the
3 settlement is fair, free of collusion, and consistent with
4 Plaintiff's fiduciary obligations to the class. See Hanlon v.
5 Chrysler Corp., 150 F.3d 1011, 1027 (9th Cir. 1998).

6 For the reasons further detailed below and discussed at the
7 Final Approval hearing held on March 17, 2021, the Court finds
8 that the Settlement Agreement is fair, adequate, and reasonable
9 under the Rule 23(e) (2) factors.

10 A. Class Representative and Class Counsel Have
11 Adequately Represented the Class.

12 In the Court's order certifying the Class, the Court found
13 that the Class Representative and Class Counsel adequately
14 represented the interests of the Class. The record shows no
15 evidence contradicting this prior finding. Class Counsel
16 represent that they vigorously prosecuted this action through
17 motion practice, several rounds of interlocutory appeals, an in-
18 person arbitration, extensive discovery, and formal mediation,
19 and therefore "possessed sufficient information to make an
20 informed decision about settlement." Hefler, 2018 U.S. Dist.
21 LEXIS 213045, at *18.

22
23
24 proposed settlement"). In the notes accompanying the Rule 23
25 amendments, the Advisory Committee explained that the amendments
26 were not designed "to displace any factor, but rather to focus
27 the court and the lawyers on the core concerns of procedure and
28 substance that should guide the decision whether to approve the
proposal." Accordingly, this Court applies the framework of Rule
23 while "continuing to draw guidance from the Ninth Circuit's
factors and relevant precedent." Hefler v. Wells Fargo & Co.,
No. 16-cv-05479-JST, 2018 U.S. Dist. LEXIS 213045 *13 (N.D. Cal.
Dec. 17, 2018).

1 B. The Settlement Was Negotiated at Arm's Length.

2 Counsel represent that the Settlement Agreement is the
3 product of serious, non-collusive, arm's-length negotiations by
4 experienced counsel with the assistance of mediators, including
5 the Honorable Edward A. Infante (Retired Magistrate Judge). See,
6 e.g., G. F. v. Contra Costa Cty., 2015 U.S. Dist. LEXIS 100512,
7 at *13 (N.D. Cal. July 30, 2015) (noting that "[t]he assistance
8 of an experienced mediator in the settlement process confirms
9 that the settlement is non-collusive"); Hefler, 2018 U.S. Dist.
10 LEXIS 213045, at *19 ("[T]he Settlement was the product of arm's
11 length negotiations through two full-day mediation sessions and
12 multiple follow-up calls supervised by former U.S. District Judge
13 Layn Phillips."). Further, Counsel represent that, before
14 agreeing upon the terms of the Settlement Agreement, the parties
15 engaged in extensive factual investigation, which included fact
16 and expert depositions, document production of over one million
17 pages of documents, written discovery, extensive briefing and
18 argument on various legal issues, including arbitrability and
19 class certification, and completed an in-person arbitration.
20 Counsel represent, in light of the foregoing, that the parties
21 were fully informed as to the viability of the claims and able to
22 adequately evaluate the strengths and weaknesses of their
23 respective positions and risks to both sides if the case did not
24 settle. These representations, which are undisputed, in addition
25 to the absence of evidence in the record of collusion or self-
26 dealing, support granting final approval.

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1 C. The Relief to the Class is Adequate.

2 1. Recovery to the Class

3 Although not articulated as a separate factor in Rule 23(e),
4 “[t]he relief that the settlement is expected to provide to class
5 members is a central concern.” Fed. R. Civ. P. 23(e)(2)(C)-(D)
6 advisory committee’s note to 2018 amendment. “The Court
7 therefore examines ‘the amount offered in settlement.’” Hefler,
8 2018 U.S. Dist. LEXIS 213045, at *18 (citation omitted).

9 a) Injunctive Relief

10 “Injunctions are the primary form of relief available under
11 the UCL to protect consumers from unfair business practices,
12 while restitution is a form of ancillary relief.” Kwikset v.
13 Superior Court, 51 Cal. 4th 310, 337 (2011). The Settlement
14 Agreement requires Defendants to change their notification
15 practices to inform consumers of potential international roaming
16 fees. It is appropriate for the Court, in assessing whether the
17 Class is benefited by the Settlement Agreement, to take into
18 account any injunctive relief, even if the Court is unable to
19 determine the exact monetary value of such relief. See Kumar v.
20 Salov, 737 Fed. App’x 341, 342 (2018) (affirming settlement
21 approval based on findings that class counsel reached an
22 “excellent result” for the class, including achieving the non-
23 monetary goal of “get[ting] the defendants to improve their
24 practices”) (unpublished); Allen v. Bedolla, 787 F.3d 1218, 1225
25 (9th Cir. 2015) (“As a whole, the settlement appears to afford
26 valuable relief, much by injunction, that will benefit the
27 class”) (citation omitted); In re Ferrero Litig., 583 F. App’x
28 665, 668 (9th Cir. 2014) (“[A] court need not determine the

1 'value' of particular injunctive relief") (citation omitted)
2 (unpublished); Laguna v. Coverall N. Am., Inc., 753 F.3d 918, 924
3 (9th Cir. 2014) (noting that the Ninth Circuit has "never
4 required a district court to assign a monetary value to purely
5 injunctive relief"), vacated on other grounds, 772 F.3d 608 (9th
6 Cir. 2014). The Settlement Agreement's inclusion of injunctive
7 relief can be considered as a class benefit even if the
8 injunction benefits not just class members, but the general
9 public. See, e.g., In re TracFone Unlimited Service Plan
10 Litigation, 112 F. Supp. 3d 993, 1005 (N.D. Cal. 2015) ("The
11 Court finds that the injunctive relief will have significant
12 value for both class members and the general public.")

13 Here, the Parties bargained for and reached an agreement
14 that Defendants would update the international roaming section of
15 Defendants' Wireless Customer Agreement to add the text discussed
16 in more detail above. This litigation also led to the
17 invalidation of AT&T's arbitration provision and to AT&T's
18 implementation of the VMCC technology discussed in more detail
19 above, which will reduce the incidence of international roaming
20 charges. The Court finds that this non-monetary relief is of
21 significant benefit to the Class and the general public.

22 b) Monetary Recovery

23 Defendants have agreed to provide each Current Customer
24 Class Member with an automatic free day of international roaming
25 on terms similar to AT&T's Day Pass, which is valued at up to
26 \$10.00 per day (Day Pass). Current Customer Class Members can
27 elect to file a Valid Claim and receive an Account Credit of up
28 to \$50.00 in lieu of the Day Pass. Former Customer Class Members

1 may submit a Valid Claim to obtain a Cash Refund of at least
2 \$4.00 up to a maximum of \$50.00. Each Account Credit or Cash
3 Refund is for the entire amount (subject to the \$50.00 maximum)
4 of international roaming charges incurred by a Class Member for
5 all one-minute calls during the Class Period. This recovery for
6 the Class is wholly separate from any attorneys' fees, costs, and
7 any incentive award.

8 Based on the record and argument submitted by the parties
9 in connection with the Settlement Agreement, as well as the
10 familiarity the Court has developed with the claims and defenses
11 in this case, the Court finds that this monetary recovery is
12 fair, reasonable, and adequate.

13 2. Effectiveness of Distribution Method.

14 As noted above, the Court concludes that the distribution
15 method and claims process is reasonable. Current Customer Class
16 Members receive an automatic benefit under the Settlement
17 Agreement, but they can choose to submit a Valid Claim for a
18 credit on their AT&T account instead. Former Customer Class
19 Members may submit a Valid Claim for a Cash Refund, which they
20 will receive by check.

21 3. The Terms of the Proposed Award of Attorneys'
22 Fees and Costs

23 As noted in section IV below, the Court finds that the
24 proposed award of attorneys' fees and costs is reasonable.

25 4. The Side Agreement Relating to Plaintiff
26 Thelian in Thelian v. AT&T Mobility LLC, Case
27 No. 4:10-cv-03440-CW.

28 The Court is required to consider any agreements required to
be identified under Rule 23(e)(3). The parties have identified

1 one such agreement pertaining to the individual settlement of a
2 case filed in the Northern District of California, relating to
3 Defendants' international roaming billing practices, by Kenneth
4 A. Thelian. Thelian agrees to settle his claims individually,
5 and to not object to this Settlement Agreement, in exchange for
6 \$5,000.

7 There is no evidence in the record suggesting that this
8 agreement unfairly impacted the recovery of the Class or the
9 Settlement Agreement in this action.

10 D. The Proposal Treats Class Members Equitably
11 Relative to Each Other.

12 For the reasons discussed above, the Court finds that the
13 plan of allocation is fair and equitable to all Class Members.

14 E. The Response of Class Members.

15 Out of an estimated 254,000 class members, there were
16 twenty-four opt-outs and two objections. There were 6,024 Valid
17 Claims, although there could be additional valid claims after the
18 deficiency notices are sent to Class Members whose claims were
19 preliminarily rejected. Docket No. 405 ¶ 17. This is an
20 overwhelmingly positive response. See Churchill Vill., 361 F.3d
21 at 577 (explaining that a court may infer that a class action
22 settlement is fair, adequate, and reasonable when few class
23 members object to it); Zepeda v. PayPal, Inc., No. C10-2500-SBA,
24 2017 U.S. Dist. LEXIS 43672, at *16 (N.D. Cal. Mar. 24, 2017)
25 (holding that "the indisputably low number of objections and opt-
26 outs, standing alone, presents a sufficient basis upon which a
27 court may conclude that the reaction to settlement by the class
28 has been favorable); Cruz v. Sky Chefs, Inc., No. C-12-02705-DMR,

1 2014 U.S. Dist. LEXIS 176393, at *5 (N.D. Cal. Dec. 19, 2014) (“A
2 court may appropriately infer that a class action settlement is
3 fair, adequate, and reasonable when few class members object to
4 it.”).

5 IV. ATTORNEYS’ FEES AND COSTS

6 Class Counsel request a fee award of \$6,130,000.00 for
7 combined fees and costs (equating to \$6,057,978.37 in fees and
8 \$72,021.63 in costs). Defendants do not oppose the fee request.
9 Counsel represent that the parties’ negotiation of the Settlement
10 Agreement was overseen by two experienced mediators, and that no
11 discussions about fees and costs began until after the parties
12 had reached an agreement as to all other terms of the Settlement
13 Agreement.

14 This Court is required to analyze an attorneys’ fee request
15 based on either (1) the “lodestar” method or (2) a percentage of
16 the total benefit made available to the settlement class,
17 including costs, fees, and injunctive relief. See, e.g.,
18 Nwabueze v. AT&T, Inc., No. C 09-01529 SI, 2014 U.S. Dist. LEXIS
19 11766, at *2-3 (N.D. Cal. Jan. 29, 2014). The Court is not
20 required to base attorneys’ fees only on the amount paid to Class
21 Members who submitted claims. See Williams v. MGM-Pathe Communs.
22 Co., 129 F.3d 1026, 1027 (9th Cir. 1997) (“We conclude that the
23 district court abused its discretion by basing the fee on the
24 class members’ claims against the fund rather than on a
25 percentage of the entire fund or on the lodestar.”); accord
26 Ellsworth v. U.S. Bank, N.A., No. 3-12-cv-02506-LB, 2015 U.S.
27 Dist. LEXIS 191662, at *4 (N.D. Cal. Sept. 24, 2015) (noting that
28 “precedent requires courts to award class counsel fees based on

1 the total benefits being made available to class members rather
2 than the actual amount that is ultimately claimed"); Miller v.
3 Ghirardelli Chocolate Co., No. 12-cv-04936-LB, 2015 U.S. Dist.
4 LEXIS 20725, at *5 (N.D. Cal. Feb. 20, 2015) (same).

5 The Court concludes that the lodestar approach is
6 appropriate for this case, because the primary form of relief is
7 injunctive and the value of the injunctive relief cannot be
8 quantified easily.

9 Under the lodestar approach, "[t]he lodestar (or touchstone)
10 is produced by multiplying the number of hours reasonably
11 expended by counsel by a reasonable hourly rate." Lealao v.
12 Beneficial California, Inc., 82 Cal. App. 4th 19, 26 (2000); see
13 also Kelly v. Wengler, 822 F.3d 1085, 1099 (9th Cir. 2016) ("[A]
14 court calculates the lodestar figure by multiplying the number of
15 hours reasonably expended on a case by a reasonable hourly rate.
16 A reasonable hourly rate is ordinarily the 'prevailing market
17 rate [] in the relevant community.'" (alteration in original)
18 (internal citation omitted). Once the court has fixed the
19 lodestar, it may increase or decrease that amount by applying a
20 positive or negative "multiplier to take into account a variety
21 of other factors, including the quality of the representation,
22 the novelty and complexity of the issues, the results obtained
23 and the contingent risk presented." Kelly, 822 F.3d at 1099.
24 The court must take into account the value of injunctive relief
25 when assessing fees under the lodestar approach, but need not
26 determine a specific monetary value associated with that relief.
27 See Hohenberg v. Drey (In re Ferrero Litig.), 583 F. App'x 665,
28 668 (9th Cir. 2014) ("Under the lodestar method, a court need not

1 determine the 'value' of particular injunctive relief because
2 fees are calculated through an assessment of time expended on the
3 litigation . . . the injunctive relief in this case is meaningful
4 and consistent with the relief requested in plaintiffs'
5 complaint. . . The district court did not abuse its discretion in
6 approving a settlement that compensated counsel under the
7 lodestar method for procuring such relief.") (unpublished);
8 Staton v. Boeing Co., 327 F.3d 938, 974 (9th Cir. 2003) (a
9 district court still "should consider the value of the injunctive
10 relief as a 'relevant circumstance'" in its fee determination).

11 Class Counsel have shown that their lodestar is \$7,292,240
12 through January 15, 2021. Docket No. 395-1 ¶¶ 84-95; Docket No.
13 403-1 ¶¶ 3-5. The Court finds that the hours claimed were
14 reasonably expended and that the rates charged are reasonable and
15 commensurate with those charged by attorneys with similar
16 experience who appear in this Court.

17 Class Counsel request a fee award of \$6,057,978.37, which
18 equals approximately 83% of their lodestar. Thus, Class
19 Counsel's requested fee award represents a negative multiplier of
20 0.83.

21 The Court finds the requested fee award to be reasonable in
22 light of the positive result that Counsel obtained for the Class,
23 taking into account the possible outcomes at, and risks of
24 proceeding to, trial; and because counsel seek substantially less
25 in fees than their lodestar. See, e.g., Schuchardt v. Law Office
26 of Rory W. Clark, 314 F.R.D. 673, 690-91 (N.D. Cal. 2016)
27 (holding fractional lodestar multiplier to be an indication of
28 reasonableness of fee request); Covillo v. Specialtys Café, No.

1 C-11-00594 DMR, 2014 U.S. Dist. LEXIS 29837, at *7 (N.D. Cal.
2 Mar. 6, 2014) ("Plaintiffs' requested fee award is approximately
3 65% of the lodestar, which means that the requested fee award
4 results in a so-called negative multiplier, suggesting that the
5 percentage of the fund is reasonable and fair."); Walsh v.
6 Kindred Healthcare, No. C 11-00050 JSW, 2013 U.S. Dist. LEXIS
7 176319, at *3 (N.D. Cal. Dec. 16, 2013) ("The Court concludes
8 that, on the facts of this case, the lodestar is reasonable,
9 especially in light of the fact that Settlement Class Counsel
10 have applied a negative multiplier, and seek an award that is
11 less than their base lodestar."); Wehlage v. Evergreen at Arvin
12 LLC, No. 4:10-CV-05839-CW, 2012 U.S. Dist. LEXIS 144152, at *1
13 (N.D. Cal. Oct. 4, 2012) ("Class Counsel do not seek
14 a multiplier on their lodestar, and in fact the requested fee is
15 a negative multiplier (-.79). The Court finds that this award is
16 appropriate here."); Lymburner v. U.S. Fin. Funding, Inc., No. C-
17 08-00325 EDL, 2012 U.S. Dist. LEXIS 14752, at *6 (N.D. Cal. Feb.
18 7, 2012) ("[T]he negative multiplier in this case supports the
19 reasonableness of the fee request."); In re Portal Software, Inc.
20 Sec. Litig., No. C-03-5138 VRW, 2007 U.S. Dist. LEXIS 88886, at
21 *16 (N.D. Cal. Nov. 26, 2007) ("Even if the court accepted the
22 unadjusted lodestar from plaintiffs' counsel (\$922,884.75), the
23 correlating multiplier of 0.74 would still reflect
24 a negative multiplier, further suggesting that the requested
25 percentage based fee is fair and reasonable.").

26 The Court is not required to perform a cross-check on the
27 lodestar method and finds it inappropriate to do so here, because
28 the value of the non-monetary relief that counsel achieved for

1 the Class is difficult to quantify. See Yamada v. Nobel Biocare
2 Holding AG, 825 F.3d 536, 547 (9th Cir. 2016) (holding that if
3 “classwide benefits are not easily monetized, a cross-check is
4 entirely discretionary,” and the district court may make its
5 award based entirely on the lodestar).

6 Chambers v. Whirlpool Corp., 980 F.3d 645, 658-59 (9th Cir.
7 2020) (Whirlpool) provides that, where the Class Action Fairness
8 Act (CAFA), 28 U.S.C § 1712, applies to a settlement—i.e., where
9 “coupons” are made available in a settlement—a court must apply a
10 lodestar “cross-check,” or in the alternative, articulate why it
11 is not feasible in a particular case. Because the settlement in
12 this case is not a coupon settlement, as Class Members have the
13 option of requesting a refund or an account credit (which is
14 cash-like), and no Class Member is required to purchase
15 additional services from Defendants to benefit from the
16 Settlement Agreement, § 1712 and, by extension, Whirlpool, do not
17 apply here.

18 In light of the foregoing, the Court approves the requested
19 fee award as fair and reasonable.

20 V. THE OBJECTIONS ARE OVERRULED

21 Two one-page objections were submitted, by Tom Griley and
22 Jon Andresen, who are proceeding without counsel. Docket No.
23 404; Docket No. 405, Ex. J. Neither challenges the substantive
24 terms of the Settlement Agreement. The objectors challenge the
25 requested fee award on the basis that the action was “frivolous”
26 and the fees requested are, therefore, unjustified.

27 In Glasser v. Volkswagen of Am., Inc., the Ninth Circuit
28 held that, “[i]n the class action context, simply being a member

1 of the class does not automatically confer standing to challenge
2 a fee award to class counsel—the objecting class member must be
3 ‘aggrieved’ by the fee award. If modifying the fee award would
4 not ‘actually benefit the objecting class member,’ the class
5 member lacks standing because his challenge to the fee award
6 cannot result in redressing any injury.” 645 F.3d 1084, 1088
7 (9th Cir. 2011) (citation omitted). On the other hand, the Ninth
8 Circuit has recognized that an objector could have standing to
9 challenge a fee award request where no common fund was created if
10 he contends that class counsel colluded with the defendant “to
11 orchestrate an excessively high fee award in exchange for an
12 unfair settlement for the class.” Id. In that event, courts
13 treat the requested fee award and the class recovery as a
14 “constructive common fund.” Id. For an objector to have
15 standing based on that (“constructive common fund”) theory,
16 however, the settlement class members’ claims must have had some
17 merit such that it could have been the case that the class
18 members’ recovery could have been higher were it not for the
19 excessive attorneys’ fees. Id.

20 Applying these principles, as well as the principles of
21 Article III standing, the Ninth Circuit concluded in Glasser that
22 an objector lacked standing to challenge a requested fee award
23 because he (1) argued that the settlement class members’ “claims
24 were entirely meritless from the beginning of the lawsuit” and,
25 (2) did not show how the allegedly excessive fees caused him a
26 concrete, particularized, and actual or imminent injury. Id.

27 As in Glasser, the objectors here state that they believe
28 that the claims of the Class lack merit (i.e., that the action is

1 "frivolous" and "trivial"), and they have not shown how they have
2 been or will be injured by the requested fee award. Under the
3 terms of the Settlement Agreement, a reduction of the fee award
4 would not increase Class Members' recovery. Additionally, the
5 objectors have not argued, or otherwise raised the inference,
6 that Class Counsel colluded with Defendants to the detriment of
7 the Class. As a result, the objectors have offered no basis to
8 find that they are or will be "aggrieved" by the requested fee
9 award. Under Glasser, therefore, the objectors lack standing to
10 challenge the requested fee award.

11 Further, even if the objectors had standing, the Court would
12 nevertheless overrule their objections because they provide no
13 basis to alter the Court's analysis with respect to the
14 reasonableness of the requested fees. See, e.g., Hefler v. Wells
15 Fargo & Co., No. 16-cv-05479-JST, 2018 U.S. Dist. LEXIS 213045,
16 at *41 (N.D. Cal. Dec. 17, 2018) (holding that generalized fee
17 objections do not provide a basis to alter the Court's analysis
18 regarding attorneys' fees). The objectors do not address the
19 fact that the requested fee award is less than the lodestar; do
20 not take into account the non-monetary benefits to the Class; and
21 do not address the fact that the monetary relief to the Class was
22 fair and reasonable relative to the losses incurred by the Class.

23 In light of the foregoing, the Court overrules the two
24 objections.

25 VI. LITIGATION COSTS

26 Class counsel may seek reimbursement of reasonable out-of-
27 pocket expenses. Fed. R. Civ. P. 23(h); see Harris v. Marhoefer,
28 24 F.3d 16, 19 (9th Cir. 1994) (holding that attorneys may

1 recover reasonable expenses that would typically be billed to
2 paying clients in non-contingency matters). Reimbursable costs
3 under Rule 23(h) include “nontaxable costs that are authorized by
4 law or by the parties’ agreement.” Fed. R. Civ. P. 23(h).

5 Here, Class Counsel seek reimbursement of \$72,021.63 in
6 litigation expenses. The Court finds that the costs that Counsel
7 incurred, see Docket No. 395-1 ¶ 96, are of the type that can be
8 billed to paying clients. No objection has been made to any cost
9 item or amount. Accordingly, the Court finds that Counsel’s
10 request for reimbursement of \$72,021.63 in costs is reasonable
11 and approves it as such.

12 VII. CLASS REPRESENTATIVE INCENTIVE AWARD

13 A court must evaluate each service award requested on an
14 individual basis, using relevant factors that include “the
15 actions the plaintiff has taken to protect the interests of the
16 class, the degree to which the class has benefitted from those
17 actions . . . [and] the amount of time and effort the plaintiff
18 expended in pursuing the litigation.” Staton, 327 F.3d at 977.
19 “Such awards are discretionary . . . and are intended to
20 compensate class representatives for work done on behalf of the
21 class, to make up for financial or reputational risk undertaken
22 in bringing the action, and, sometimes, to recognize their
23 willingness to act as a private attorney general.” Rodriguez v.
24 West Publishing Corp., 563 F.3d 948, 958-59 (9th Cir. 2009). A
25 court must “scrutiniz[e] all incentive awards to determine
26 whether they destroy the adequacy of the class representatives.”
27 Radcliffe v. Experian Info. Solutions, 715 F.3d 1157, 1163 (9th
28 Cir. 2013).

1 Here, Plaintiff requests an incentive award of \$15,000. The
2 Court finds that an award of this amount is reasonable because
3 Plaintiff came forward to represent the interests of hundreds of
4 thousands of Class Members, with very little to gain personally,
5 as his individual alleged damages were minimal. Plaintiff was
6 deposed, compiled documents, answered interrogatories, regularly
7 corresponded with counsel, and undertook the risk of being
8 required to pay Defendants' costs. Docket No. 395-1 ¶¶ 78-79.
9 No objection has been made to the requested incentive award.
10 Thus, the Court approves the \$15,000 incentive award for
11 Plaintiff.

12 VIII. COMPLIANCE WITH CLASS ACTION FAIRNESS ACT

13 The record shows that Counsel served the required notices
14 under the CAFA, 28 U.S.C. § 1715, with the documentation required
15 by 28 U.S.C. § 1715(b). See Docket No. 405 ¶¶ 2-5. Other than a
16 contact from the Office of the Attorney General for Washington
17 acknowledging receipt of one of the notices, Counsel represent
18 that they did not receive any other responses to the notices, and
19 no such responses have been filed on the docket. Id. ¶¶ 4-5.

20 IX. REQUIRED AMENDMENTS TO CUSTOMER AGREEMENT

21 As required by the Settlement Agreement, no later than
22 thirty days after the Effective Date of the Settlement Agreement,
23 Docket No. 305-1, Ex. 1 § 3.1, Defendants shall add text
24 materially similar to the following to the international roaming
25 section of Defendants' Wireless Customer Agreement:
26 "International roaming rates apply to incoming and outgoing calls
27 messages and data use while you're located outside the United
28 States, Puerto Rico, or the U.S. Virgin Islands. In some

1 countries, you may be charged international roaming rates even
2 for calls that you do not answer." Defendants have the right to
3 make revisions to these disclosures provided that the revised
4 text is clear, accurate, complete, and non-misleading.
5 Defendants also have the right to revise their wireless customer
6 agreement in a manner that is consistent with any prospective
7 changes to federal and California law. The right to make
8 revisions includes the right to remove these disclosures if
9 customers cannot be charged international roaming rates for calls
10 that are not answered. Nothing in this paragraph shall be
11 interpreted to interfere with Defendants' obligations to comply
12 with all applicable state and federal laws.

13 X. DISTRIBUTION OF SETTLEMENT BENEFITS AND PAYMENT OF
14 ADMINISTRATIVE COSTS

15 Defendants shall provide the Settlement Benefits to Class
16 Members as set forth in Part IV of the Settlement Agreement. No
17 later than sixty days after the Effective Date, Defendants shall
18 distribute the Day Passes and Account Credits to eligible Class
19 Members. No later than forty-five days after the Effective Date,
20 Defendants shall pay the Claims Administrator the total amount
21 necessary to pay all Cash Refunds, so that the Claims
22 Administrator can distribute such Cash Refunds to eligible Class
23 Members no later than sixty days after the Effective Date.
24 Defendants also shall pay the Claims Administrator its reasonable
25 costs and expenses in processing claims and administering the
26 Settlement Agreement.

27 Upon completion of the implementation and administration of
28 the Settlement, Defendants and the Claims Administrator shall

1 provide declarations for filing with the Court containing the
2 post-distribution information required by the Civil Local Rules
3 regarding Post-Distribution Accounting.

4 XI. RELEASES; EFFECT OF THIS ORDER

5 A. Releases by Class Representative

6 By operation of this Order and Judgment, Plaintiff,
7 including his predecessors, successors, agents, assigns,
8 attorneys and members of their families, on the one hand, and
9 Defendants on the other hand, shall have unconditionally,
10 completely, and irrevocably released and forever discharged each
11 other from and shall be forever barred from instituting,
12 maintaining, or prosecuting:

13 (a) any and all claims, liens, demands, actions, causes of
14 action, rights, duties, obligations, damages or liabilities of
15 any nature whatsoever, whether legal or equitable or otherwise,
16 known or unknown, that actually were, or could have been,
17 asserted in the Litigation, whether based upon any violation of
18 any state or federal statute or common law or regulation or
19 otherwise, or arise directly or indirectly out of, or in any way
20 relate to, the Allegations, Claims, or contentions that
21 Plaintiff, on the one hand, and Defendants, on the other hand,
22 have had in the past, or now have, related to the Released
23 Claims; and

24 (b) any and all other claims, liens, demands, actions, causes
25 of action, rights, duties, obligations, damages or liabilities of
26 any nature whatsoever, whether legal or equitable or otherwise,
27 known or unknown, that Plaintiff, on the one hand, and
28

1 Defendants, on the other hand, have had in the past or now have,
2 related in any manner to the Released Claims.

3 (c) Plaintiff shall, by operation of this Order and
4 Judgment, be deemed to have waived any and all provisions,
5 rights, and benefits conferred by any law of any state of the
6 United States, or principle of common law or otherwise, which is
7 similar, comparable, or equivalent to section 1542 of the
8 California Civil Code, which provides:

9 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
10 WHICH THE CREDITOR OR RELEASING PARTY DOES
11 NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
12 FAVOR AT THE TIME OF EXECUTING THE RELEASE
AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE
MATERIALLY AFFECTED HIS OR HER SETTLEMENT
WITH THE DEBTOR OR RELEASED PARTY.

13 Plaintiff understands and acknowledges the significance of these
14 waivers of California Civil Code section 1542 and any other
15 applicable federal or state statute, case law, rule, or
16 regulation relating to limitations on releases. In connection
17 with such waivers and relinquishment, Plaintiff acknowledges that
18 he is aware that he may hereafter discover facts in addition to,
19 or different from, those facts that he now knows or believes to
20 be true with respect to the subject matter of the Settlement
21 Agreement, but that it is his intention to release fully,
22 finally, and forever all Released Claims with respect to the
23 Released Parties, and in furtherance of such intention, the
24 release of the Released Claims will be and remain in effect
25 notwithstanding the discovery or existence of any such additional
26 or different facts.

27 B. Releases by Class Members

28 By operation of this Order and Judgment, Class Members

1 (except any such Person who has filed a proper any timely request
2 for exclusion from the Class), including any Person claiming
3 derivative rights of any Class Member as the Class Member's
4 parent, child, heir, guardian, associate, co-owner, attorney,
5 agent, administrator, executor, devisee, predecessor, successor,
6 assignee, assigns, representative of any kind, shareholder,
7 partner, director, employee or affiliate, shall release and
8 forever discharge the Released Parties from any and all
9 claims, liens, demands, actions, causes of action, rights,
10 duties, obligations, damages or liabilities of any nature
11 whatsoever, whether legal or equitable or otherwise, known or
12 unknown, whether arising under any international, federal,
13 state, or local statute, ordinance, common law, regulation,
14 principle of equity or otherwise, that were, or could have
15 been, asserted in the Litigation and that arise out of or
16 relate to international roaming charges incurred during the
17 Class Period; or that could have been asserted in the
18 Litigation regarding the Released Claims. Class Members shall
19 be forever barred from initiating, maintaining, or prosecuting
20 any Released Claims against Released Parties. "Released Parties"
21 means Defendants and each of their respective current and former
22 parent companies, subsidiaries, divisions, and current and former
23 affiliated individuals and entities, legal successors,
24 predecessors (including companies they have acquired, purchased,
25 or absorbed), assigns, joint ventures, and each and all of their
26 respective officers, partners, directors, owners, stockholders,
27 servants, agents, shareholders, members, managers, principals,
28 investment advisors, consultants, employees, representatives,

1 attorneys, accountants, lenders, underwriters, benefits
2 administrators, investors, funds, and insurers, past, present and
3 future, and all persons acting under, by, through, or in concert
4 with any of them.

5 By operation of this Order and Judgment, with respect to the
6 Released Claims set forth above, Class Members shall be deemed to
7 have waived and relinquished, to the fullest extent
8 permitted by law, the provisions, rights and benefits conferred
9 by any law of any state of the United States, or principle of
10 common law or otherwise, which is similar, comparable, or
11 equivalent to section 1542 of the California Civil Code, which is
12 quoted above.

13 The Class Members understand and acknowledge the
14 significance of these waivers of California Civil Code section
15 1542 and any other applicable federal or state statute, case law,
16 rule or regulation relating to limitations on releases.

17 By operation of this Order and Judgment, the Parties shall
18 be deemed to have agreed that the release set forth herein will
19 be and may be raised as a complete defense to and will preclude
20 any action or proceeding based on the Released Claims.

21 C. Other Effects of This Order

22 No action taken by the Parties, either previously or in
23 connection with the negotiations or proceedings connected with
24 the Settlement Agreement, shall be deemed or construed to be an
25 admission of the truth or falsity of any claims or defenses
26 heretofore made or an acknowledgment or admission by any Party of
27 any fault, liability or wrongdoing of any kind whatsoever to any
28 other Party. Neither the Settlement Agreement nor any act

1 performed or document executed pursuant to or in furtherance of
2 the settlement: (a) is or may be deemed to be or may be used as
3 an admission of, or evidence of, the validity of any claim made
4 by the Class Members or Class Counsel, or of any wrongdoing or
5 liability of the persons or entities released under this Order
6 and Judgment and the Settlement Agreement, or (b) is or may be
7 deemed to be, or may be used as an admission of, or evidence of,
8 any fault or omission of any of the persons or entities released
9 under this Order and Judgment and the Settlement Agreement, in
10 any proceeding in any court, administrative agency, or other
11 tribunal. Defendants' agreement not to oppose the entry of this
12 Order and Judgment shall not be construed as an admission or
13 concession by Defendants that class certification was appropriate
14 in the Litigation or would be appropriate in any other action.

15 Except as provided in this Order, Plaintiff shall take
16 nothing against Defendants by his Complaint. This Order shall
17 constitute a Final Judgment binding the Parties and Class Members
18 with respect to this Litigation.

19 The Litigation is hereby dismissed on the merits and with
20 prejudice and final judgment shall be entered thereon, as set
21 forth in this Order.

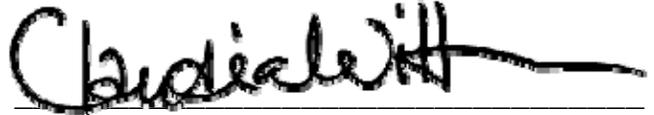
22 Without affecting the finality of the judgment hereby
23 entered, the Court reserves jurisdiction over the implementation
24 of the Settlement Agreement. In the event the Effective Date
25 does not occur in accordance with the terms of the Settlement
26 Agreement, then this Order and any judgment entered thereon shall
27 be rendered null and void and shall be vacated, and in such
28 event, all orders and judgments entered and releases delivered in

1 connection herewith shall be null and void and the Parties shall
2 be returned to their respective positions ex ante.

3 Because there is no just reason for delay, the Court directs
4 the Clerk of Court to enter judgment forthwith as set forth in
5 this Order.

6 IT IS SO ORDERED.

7 Dated: March 24, 2021

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10 CLAUDIA WILKEN
11 UNITED STATES DISTRICT JUDGE
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