

EXHIBIT A

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

| | | |
|---|---|-----|
| TRACIE MCFERREN, individually and on |) | No. |
| behalf of a class of similarly situated |) | |
| individuals, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | |
| |) | |
| AT&T Mobility, LLC, a Delaware |) | |
| limited liability company, |) | |
| |) | |
| Defendant. |) | |

**PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL
OF CLASS ACTION SETTLEMENT**

The plaintiff, by and through the undersigned counsel, and with the express consent of defendant, and for the reasons set forth in the attached Memorandum in Support of Preliminary Approval of Class Action Settlement, moves to this Court to enter an Order pursuant to O.C.G.A. § 9-11-23 granting preliminary approval of a class action settlement in the above-styled action and certifying a class for the purpose of settlement, showing as follows:

1.

The parties, after extensive mediation, have reached an agreement regarding the settlement of the above-styled action and fifteen related cases that is fair, adequate and reasonable and is well within the range of possible approval.

2.

The parties have also stipulated to the certification of the proposed class for the purposes of settlement as the class is so numerous that joinder is impracticable, there are questions of law and fact common to the class, the claims of the representative parties are typical of the claims of the class, and the representative parties will fairly and adequately protect the interests of the class.

3.

In addition, the questions of law and fact common to the class predominate over individual questions and a class action is the superior method for the efficient adjudication of this controversy.

WHEREFORE, Plaintiff moves this Court to enter an Order granting preliminary approval of the class action settlement, to certify the class for purpose of settlement, and to enter such additional relief that it deems necessary and just. A proposed order accompanies this motion.

Respectfully submitted,

BOONE & STONE

By: /S/ William S. Stone

William S. Stone

GA Bar No. 684636

P.O. Drawer 7
589 College Street
Blakely, Georgia 39823
Tel 229.723.3045
Fax 229.723.4834

Attorneys for Plaintiff

**IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA**

| | | |
|--|--|--------------|
| TRACIE MCFERREN, individually and on behalf) of a class of similarly situated individuals,)) <i>Plaintiff,</i>) | | No. |
| v.) | | Judge Bonner |
| AT&T MOBILITY LLC,)) <i>Defendant.</i>) | | |

**PLAINTIFF'S MEMORANDUM IN SUPPORT OF PRELIMINARY
APPROVAL OF CLASS ACTION SETTLEMENT**

This proposed class action settlement involves a practice known in the cellular telephone industry as “cramming.” That is, the Defendant, AT&T Mobility LLC’s (“AT&T Mobility”), is alleged to have allowed third-party mobile content providers to place charges on its customers’ bills for unauthorized “premium mobile content.”¹ Although AT&T Mobility has not directly contributed to the cramming, plaintiffs’ claims (which are disputed by AT&T Mobility) allege that AT&T Mobility has simultaneously benefited from and neglected to act aggressively enough to prevent it. Class Counsel and the members of the Plaintiff’s Steering Committee have been litigating this case and 15 related cases for over two years. During that time, Plaintiffs engaged in motion practice, conducted formal and informal discovery, and participated in upwards of ten in-person settlement meetings with AT&T Mobility and other defendants named in these lawsuits prior to agreeing upon a formal mediation process. The parties ultimately held joint²

¹ Typical “premium mobile content” services include products such as customized ringtones, sports score updates, weather alerts, stock tips, jokes, daily horoscopes, and even interactive radio and participatory television delivered to consumers primarily in the form of text messages.
² It is plaintiffs’ understanding that, both prior to and contemporaneous with these sessions, AT&T Mobility had a number of in-person and telephonic mediation sessions involving it and several third-party mobile content providers and aggregators.

mediation sessions on May 12-13, 2008, and again on May 22-24, 2008 before mediator Rodney A. Max, a principle of the Upchurch Watson White & Max Mediation Group.

Through the mediation process, the parties were able to reach an incredibly strong settlement. (A true and accurate copy of the settlement agreement is attached as Exhibit A). The settlement provides the class with refunds equal to the amount of all unauthorized third-party mobile content charges. (If the charge recurred on a monthly basis based on a subscription or similar arrangement, class members may recover up to three times the amount of any such recurring charge). AT&T has also agreed to take steps to inform its customers about mobile content, the ability to restrict its purchase through parental controls, and methods for its customers to dispute unauthorized charges and cancel mobile content subscriptions. In total, the settlement terms approach the best plaintiffs could have hoped to achieve at trial. Given the hurdles facing them in this litigation, the results achieved are well beyond those required to preliminary approve the settlement and are supported not only by Plaintiff and AT&T Mobility, but also by the lead plaintiffs and their respective counsel in fifteen³ cases filed or pending in other state or federal courts throughout the country.

³ Joining in support of the settlement are plaintiffs and counsel in the following class actions that assert similar claims and are presently pending in other state or federal jurisdictions: *Baker v. New Motion, Inc. et al*, 2007-46363 (Fl. St. Ct.); *Dedek v. AT&T Mobility LLC*, No. BC387728 (Sup. Ct. L.A. County); *Fiddler v. AT&T Mobility LLC, et al.*, No. 1:08-cv-00416 (N.D. Ill.); *Goddard v. Google, Inc.*, BC 667876 (Cal. St. Ct.); *Gray v. Mobile Messenger Americas, Inc. et al*, 07-36302 (Fl. St. Ct.); *Hensley v. AT&T Mobility LLC*, (4th Jud. Dist., Hennepin Cty, Minn.); *Jiran v. AT&T Mobility LLC, et al.*, No. 4:08-cv-00013 (N.D. Cal.); *Paluzzi v. mBlox, et al.*, No: 2007-CH-37213 (Cir. Ct. Cook Cty, Ill.); *Thielen v. Buongiorno USA, Inc.*, No. 1:06-cv-00016 (W.D. Mich.) (dismissed); *Walsh v. mBlox, et al.*, No. BC 382356 (Cal. St. Ct.); *Warren et al. v. OpenMarket, Inc., et al.*, No. 6:07-cv-02043 (M.D. Fla.); *White v. AT&T Mobility LLC*, No. 104651-08 (N.Y. Sup. Ct.); *Pishvae v. VeriSign, Inc., et al.*, No. 4:07-cv-03407 (N.D. Cal.); *Valdez v. Buongiorno USA, Inc. et al*, No. 4:07-cv-06496-CW (N.D. Cal.); *Knox et al. v. M-Qube, Inc.*, 1:07-cv-10124 (D. Mass.).

Plaintiff thus moves the Court to preliminary approve the instant settlement, certify the settlement class, and appoint the following leadership structure for Class Counsel in this case:

- Liaison Counsel: David W. Boone, William S. Stone and Aileen Page of Boone & Stone.
- Lead Counsel: Jay Edelson, Scott A. Kamber, and Myles McGuire of KamberEdelson, LLC.
- Plaintiff's Steering Committee: Robert Shelquist of Lockridge Grindal Nauen, P.L.L.P. (chairman), Orin Giskan, of Giskan, Solotaroff, Anderson & Stewart, LLP, David Healey of the Law Offices of David Healey and John G. Jacobs of The Jacobs Law Firm, Chtd.

For convenience, a proposed preliminary schedule of events leading to a final approval hearing (the "Settlement Hearing") is provided in Section VI of this brief.

I. NATURE OF THE LITIGATION

A. The Mobile Content Class Actions

Over the last two years, class actions have been filed throughout the country by consumers challenging the "cramming" practices related to AT&T Mobility, whereby charges for mobile content are allegedly included in consumers' cellular telephone bills without their authorization. As alleged in these complaints, though disputed by the defendants, "cramming" is the result of systematic flaws in AT&T Mobility's billing system that arose due to the rapid and largely unplanned growth of the mobile content industry. To provide for the ever-increasing demand of consumers for mobile content, AT&T Mobility contracted with entities called "aggregators" (such as mBlox Inc., VeriSign, and M-Qube, Inc.) who act as middlemen between the mobile content providers and the wireless carriers. Most mobile content providers lack the wherewithal to enter into contractual relationships with the large wireless carriers such as AT&T

Mobility. In addition to fostering these ties, the aggregators are responsible for the actual billing and delivery of mobile content to the consumers via cell phone technology.

The providers of mobile content charge and collect payment from their customers by “piggybacking” on the cell phone bills sent to consumers by AT&T Mobility. Both the aggregators and the wireless carriers are compensated for their services to the mobile content providers by retaining a substantial percentage of the amount each mobile content transaction. Although AT&T Mobility has taken preventative steps, plaintiffs’ complaints allege that its billing and collection systems in aid of the premium mobile content industry lack sufficient checks or safeguards to prevent unauthorized charges from being added to customers’ bills.

Of the lawsuits filed, many (including McFerren’s Complaint), broadly challenge the alleged occurrence of “unauthorized charges” for third-party mobile content and broadly define the putative class to include AT&T Mobility subscribers across the nation who suffered damages as a result of being billed for mobile content that was not authorized by the subscriber.

Additional class actions have been filed against AT&T Mobility involving a subset⁴ of the “cramming” flaw, the so-called “recycled numbers” charges. These cases address charges that were allegedly unauthorized by the current holder of a wireless telephone number, but were

⁴ It should be noted that another, more narrow subset of the cramming issue focuses largely on: (1) the alleged industry practice of targeting mobile content advertisements specifically to minors, who may not have the authority to bind their parents to pay for such services; and (2) the marketing practices of mobile content by Jamster International SARL (“Jamster”). AT&T Mobility and certain aggregators and third-party content providers, including Jamster, are named in those suits, in addition to other carriers. The majority of these cases (some await ruling on pending motions to transfer) have been consolidated by the Judicial Panel on Multidistrict Litigation in the case of *In Re Jamster Marketing Litigation*, MDL No. 1751, Master File No. 05-CV-0819 JM (CAB) and are presently pending in the United States District Court for the Southern District of California. Plaintiffs’ understanding is that the MDL cases have only litigated certain procedural issues, most notably arbitration clauses, and have not progressed into the merits. As a prerequisite to negotiating with AT&T Mobility, Class Counsel secured representations from AT&T Mobility and the other related parties that they were not negotiating with any other plaintiffs’ group. (McGuire Decl. ¶ 6).

authorized by the former holder of the number before it was abandoned and “recycled” to the current owner. The proposed settlement would cover the claims asserted in all of these actions as they relate to AT&T Mobility customers as well as those alleged in McFerren’s Complaint.

B. Litigation and Investigation.

Proposed Class Counsel began a wide-ranging investigation into the premium mobile content industry in 2005. (See Declaration of Myles McGuire ¶ 2, a true and accurate copy of which is attached as Exhibit B). To date, that investigation has resulted in information gathered from over 1,000 aggrieved consumers. (McGuire Decl. ¶ 2). It has lead to an exchange of information and litigation strategy with multiple governmental agencies, including attorney general offices in Florida and Minnesota. (McGuire Decl. ¶ 2). Class Counsel has received and reviewed numerous documents produced from both the Maryland and Florida attorney generals’ offices. (McGuire Decl. ¶ 2). And, most relevant, it has resulted in litigation throughout the country.

In January of 2006, Class Counsel filed the first case involving third party mobile content sold to AT&T customers. (McGuire Decl. ¶ 3). During the following 28 months, they and the members of the proposed Plaintiff’s Steering Committee, filed fifteen addition lawsuits that now have joined in support of the settlement. (McGuire Decl. ¶ 3). These lawsuits, which collectively name AT&T Mobility, every major U.S. aggregator, and several third party content providers, are as follows:

- *McFerren v. AT&T Mobility LLC*, (Fulton County, GA) (Complaint is attached hereto as Exhibit C);
- *Baker v. New Motion, Inc. et al*, 2007-46363 (Fl. St. Ct.)
- *Goddard v. Google, Inc.* BC 667876 (Cal. St. Ct.);

- *Pahuzzi v. mBlox, et al.*, No: 2007-CH-37213 (Cook Cty, IL),
- *Thielen v. Buongiorno USA, Inc.*, 1:06-cv-00016 (W.D. Mich.)
(dismissed);
- *Walsh v. mBlox, et al.*, No. BC. BC 382356 (Cal. St. Ct.),
- *White v. AT&T Mobility*, No. 104651-08 (N.Y. Sup. Ct.)
- *Warren et al. v. OpenMarket Inc., et al.* No. 6:2007cv02043 (M.D. Fl.)
- *Jiran v. AT&T Mobility LLC, et al.*, Civ. A. No. 08-00013, (N.D. Cal.);
- *Hensley v. AT&T Mobility LLC* (Dist. Ct., 4th Jud. Dist., Hennepin Cty, Minn.);
- *Gray v. Mobile Messenger Americas, Inc. et al.*, 07-36302 (Fl. St. Ct.);
- *Fiddler v. AT&T Mobility LLC, et al.*, Civ. A. No. 08-0416, (N.D. Ill.);
- *Jiran v. AT&T Mobility LLC, et al.*, Civ. A. No. 08-00013, (N.D. Cal.);
- *Valdez v. Buongiorno USA, Inc. et al*, 4:07-cv-06496-CW (N.D. Cal.);
- *Knox v. m-Qube, Inc.* 1:07-cv-10124 (D.Mass.); and
- *Dedek v. AT&T Mobility LLC*, Case No. BC387728 (Sup. Ct. L.A. Cty).

(McGuire Decl. ¶ 3).

The procedural history of these cases is varied. In many cases, procedural motions—such as motions to remand or motions to compel arbitration—have been briefed and/or decided by the courts. (McGuire Decl. ¶ 4). In others, substantive motions have been filed and/or decided. (McGuire Decl. ¶ 4). Formal and informal discovery have been produced and witnesses have been made available for interviews by the various key defendants including AT&T Mobility, mQube, Verisgn, and m-Blox. (McGuire Decl. ¶ 4). The information received

in these cases has also been cross-checked against information produced in litigation involving carriers other than AT&T Mobility.

C. Mediation & Settlement

During the time that the parties have been litigating the issues arising from plaintiffs' claims for so-called "unauthorized" charges for third-party mobile content, counsel for plaintiffs, AT&T Mobility and several of the aggregators and third party content providers have had preliminary negotiations, which essentially centered on exchanges of information and discussions about their respective approaches to these cases. (McGuire Decl. ¶ 5). Specifically, Class Counsel met in person with both outside and in-house counsel for AT&T Mobility in Chicago, Illinois in February of 2008 and then again in Seattle, Washington in March of 2008. (McGuire Decl. ¶ 7). Class Counsel met in person with m-Qube's in-house and outside counsel in Chicago in August of 2007 and in Washington D.C. in October of 2007. (McGuire Decl. ¶ 8). Class Counsel met with mBlox's outside counsel in Chicago in November of 2007 and again in February of 2008. (McGuire Decl. ¶ 9).

As a result of these discussions, AT&T Mobility, along with several aggregators and third-party mobile content providers, and plaintiffs engaged Rodney A. Max as mediator for sessions that took place on May 12-13, 2008 in Chicago, Illinois. (McGuire Decl. ¶ 10). Although no settlement was reached after the initial two-day meeting, the parties continued to exchange information and to discuss a framework for settlement. (McGuire Decl. ¶ 11). The parties, this time without the aggregators or third-party mobile content providers, agreed to again meet with Mr. Max to mediate for an additional three days over Memorial Day weekend in the hope that a settlement could be finalized. (McGuire Decl. ¶ 11) As a result of the second round of mediation, the parties were able to reach an agreement in principle. (McGuire Decl. ¶ 12)

Only after that was accomplished, did the parties discuss attorneys' fees and class representative incentive awards. (McGuire Decl. ¶ 13). The parties' agreement was later formalized and executed on May 28, 2008. (McGuire Decl. ¶ 14).

II. SUMMARY OF THE PROPOSED SETTLEMENT

The key terms of the proposed settlement follow:

1. ***Class Definition.*** The settlement class is defined as follows:

All current and former AT&T Mobility Account Holders Nationwide who, at any time from January 1, 2005 to the Notice Date, were billed and paid for Third Party Mobile Content. Excluded from the Class are the following: the Defendant, the Third Party Providers, the Claims Administrator, the Mediator, and any of their respective parent, subsidiary, affiliate or control person of the Defendant, as well as the officers, directors, agents, servants, or employees of the Defendant, any trial judge presiding over this case over any of the actions which comprise the Action or Coordinated Actions, and the immediate family members of any such Person(s).

2. ***Individual Class Member Benefits.*** AT&T Mobility has agreed to refund the amount of all unauthorized third-party mobile content charges that were billed to the settlement class from January 1, 2004 to the notice date. If the charge recurring on a monthly basis based on a subscription or similar arrangement, the settlement class members may only recover up to three times the amount of any such recurring charge. To be eligible for any refund, the charges must have been unauthorized and not previously refunded to your account. The refund can come in one of two forms: (a) a credit on their AT&T Mobility bill; or (b) a cash payment from the claims administrator.

3. ***Group Relief and Additional Relief.***

In addition to the individual relief to the Settlement Class provided above, the Defendant has agreed to provide the following group and other relief.

A. AT&T Mobility Service Improvements & Assurances: AT&T

Mobility has agreed to provide disclosures regarding mobile content in its Wireless Customer Service Agreement and on its website. In addition, AT&T Mobility will provide a telephone number and website address in all bills for customers who seek to dispute a charge. AT&T Mobility has further agreed to provide and enhance as necessary the means for its customers to freely address billing issues and cancel third-party mobile content subscriptions.

B. Payment of Notice and Administrative Fees: AT&T Mobility will pay

for the cost of sending the Class Notice and any other notice as required by the Court as well as all costs of administration of the settlement.

C. Compensation for the Class Representative: In addition to any award

under the Settlement, and in recognition of their efforts on behalf of the Class, Tracie McFerren, Morris Fiddler and Kristen Hensley, along with the other Plaintiffs in the related cases, will share \$10,000 to be paid by AT&T Mobility as appropriate compensation for serving as class representatives in this litigation.

D. Payment of Attorneys Fees: Defendant has agreed to pay Class Counsel,

subject to Court approval, Four Million Three Hundred Thousand dollars (\$4,300,000) in attorneys' fees and for the reimbursement of costs. AT&T Mobility has agreed that this amount is fair and reasonable and that it will not object to, or otherwise challenge, Class Counsel's application for reasonable attorneys' fees and for reimbursement of costs and other expenses. Class Counsel has, in turn, agreed not to seek more than said amount from the Court.

4. *Release.*

With respect to any and all Claims, and upon entry of Final Order and Judgment without further action, for good and valuable consideration, Plaintiff, on behalf of herself and the

Settlement Class and as the representative of the Settlement Class, shall expressly, and all Settlement Class members shall be deemed to have, and by operation of the final judgment contemplated by the parties agreement shall have, fully, finally, and forever expressly waived and relinquished with respect to Settled Claims, to the fullest extent permitted by law, any and all provisions, rights, and benefits of section 1542 of the California Civil Code and any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States or principle of common law that is similar, comparable, or equivalent to section 1542 of the California Civil Code, which provides: "A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

For the purposes of this release, "Settled Claims" means any claim, liability, right, demand, suit, matter, obligation, damage, loss or cost, action or cause of action, of every kind and description that the Settlement Class has or may have, including assigned claims, whether known or unknown, asserted or unasserted, latent or patent, that is, has been, could reasonably have been or in the future might reasonably be asserted by the Releasing Party either in the Action or in any other action or proceeding in this Court or any other court or forum, regardless of legal theory, and regardless of the type or amount of relief or damages claimed, against any of the Released Parties arising out or relating to a charge to any Account Holder for Third Party Mobile Content, including all claims that were brought or could have been brought in the Action, the Coordinated Actions or the Recycled Number Actions, and involving any allegation on any basis that such charge was unauthorized. Settled Claims include, but are not limited to, claims that the Third Party Mobile Content charges were the result of fraudulent or misleading

marketing or billing practices, the actions of minors who did not have the capacity to agree to such charges, or that were the result of receiving a “recycled” cellular telephone number.

The Release is only between the class members defined above, AT&T Mobility, and Third-Party Providers⁵ and includes their respective predecessors, successors, assigns, parents, subsidiaries, divisions, departments, and affiliates, and any and all of their past, present and future officers, directors, employees, stockholders, partners, agents, servants, successors, attorneys, representatives, subrogees and assigns of any of the foregoing.

III. THE PROPOSED SETTLEMENT WARRANTS PRELIMINARY APPROVAL

Like Federal Rule of Civil Procedure 23, O.C.G.A. § 9-11-23(e) provides that “[a] class action shall not be dismissed or compromised without the approval of the court.”⁶ The procedure for review of a proposed class action settlement is a well-established two-step process. Alba & Conte, 4 *Newberg on Class Actions*, §11.25, at 38-39 (4th Ed. 2002). The first step is a preliminary, pre-notification hearing to determine whether the proposed settlement is “within the range of possible approval.” *Newberg*, §11.25, at 38-39 (quoting *Manual for Complex Litigation*, §30.41 (3rd Ed.)); *In re Syncor ERISA Litig.*, 516 F.3d 1095, 1110 (9th Cir. 2008); *In re Chicken Antitrust Litig.*, 560 F. Supp. 957, 960 (N.D. Ga. 1980). This hearing is not a fairness

⁵ As used here, Third Party Providers means entities other than AT&T Mobility who advertise, aggregate billing for, offer, and/or sell Third Party Mobile Content, including Third Party Mobile Content Subscriptions, directly to AT&T Mobility’s wireless customers as well as their marketing agents and/or licensors, and includes VeriSign, M-Qube, Jamster International SARL, and mBlox. Providers who sell Mobile Content on or through AT&T Mobility’s Media Mail are not thereby Third Party Providers for the purposes of such sales.

⁶ Plaintiff’s Motion cites to Georgia state law where available and to federal authority due to the similarity between the two rules as well as Georgia Courts’ history of looking to federal law for guidance on both the approval of this class action settlement as well as class certification. See *Sta-Power Indus. Inc. v. Avant*, 216 S.E.2d 897, 900 (Ga. Ct. App. 1975); Casurella, Jeffrey, & Bevis, *John Class Action Law in Georgia: Emerging Trends in Litigation, Certification, & Settlement*, 49 Mercer L. Rev. 39, 59 (Fall 1997) (recognizing that “Georgia case precedent dealing with . . . class action settlements is scarce”).

hearing; its purpose, rather, is to ascertain whether there is any reason to notify the class members of the proposed settlement and to proceed with a fairness hearing. *Newberg*, §11.25, at 38-39; O.C.G.A § 9-11-23(e)(requiring “notice of the proposed dismissal or compromise shall be given to all members of the class . . .”). The *Manual for Complex Litigation* (Fourth) (2004) (the “Manual”) characterizes the preliminary approval stage as an “initial evaluation” of the fairness of the proposed settlement made by the court on the basis of written submissions and informal presentation from the settling parties. *Manual*, § 21.632. If the court finds a settlement proposal “within the range of possible approval,” it then proceeds to the second step in the review process—the final approval hearing. *Newberg*, §11.25, at 38-39; *In re Chicken Antitrust Litig.*, 560 F. Supp. at 960 (finding “it is well settled that a proposed settlement, taken on the whole, need only be fair, adequate, and reasonable in light of the interests of all the parties and not a product of fraud or collusion” in order to meet preliminary approval).

A strong judicial policy exists that favors the voluntary conciliation and settlement of complex class action litigation. *In re Syncor*, 516 F.3d at 1101; *see also Warren v. City of Tampa*, 693 F. Supp. 1051, 154 (M.D. Fla. 1998) (noting courts favor settlement of disputed claims), *aff’d* 893 F. 2d 347 (11th Cir. 1998). With a settlement, the class members are ensured a benefit as opposed to the “mere possibility of recovery at some indefinite time in the future.” *In re Domestic Air Transport.*, 148 F.R.D. 297, 306 (N.D. Ga. 1993). While this Court has discretion regarding the approval of a proposed settlement, it should give proper deference to the private consensual decision of the parties. *Warren*, 693 F. Supp. at 1054 (“affording great weight to the recommendations of counsel for both parties, given their considerable experience in this type of litigation”). In fact, when a settlement is negotiated at arms’ length by experienced counsel, there is a presumption that it is fair and reasonable. *In re Inter-Op Hip*

Prosthesis Liab. Litig., 204 F.R.D. 359, 380 (N.D. Ohio 2001). Ultimately, the Court's role is to ensure that the settlement is fundamentally fair, reasonable and adequate. *In re Syncor*, 516 F.3d at 1100.

In determining whether the instant proposed settlement is "fair, adequate, and reasonable," the following factors are often considered:

(1) the likelihood of success at trial; (2) the range of possible recovery; (3) the point on or below the range of possible recovery at which settlement is fair, adequate and reasonable; (4) the complexity, expense and duration of litigation; (5) the substance and amount of opposition to the settlement; and (6) the stage of proceedings at which the settlement was achieved.

Bennett v. Behring, 737 F. Supp. 982, 986 (11th Cir. 1984); *see also Domestic Air Transport.*, 148 F.R.D. at 312-13. Finally, "approval of a class action settlement does not require a final decision on the substantive law merits . . . and does not require the trial court to expressly consider the law of every state involved . . ." *Smith v. AirTouch Cellular of Ga. Inc.*, 534 S.E.2d 832, 835 fn 1 (Ga. Ct. App. 2000).

In this case, there is no question that the proposed settlement is both "fair, adequate, and reasonable" and "within the range of possible approval." The fairness, reasonableness, and adequacy of this settlement are apparent from the full reimbursement of all allegedly unauthorized charges, the substantial service improvements and assurances from AT&T Mobility, and the agreement of the parties' experienced counsel. In fact, this settlement is entitled to a presumption of fairness, as it is the product of extensive arms' length negotiations of the parties represented by highly experienced counsel. Although Plaintiff's counsel is confident in the strength of the claims alleged in the Complaint and that they would ultimately prevail at trial, their experience imparts the wisdom that litigation is inherently risky. When the strengths of the Plaintiff's claim are weighed against the legal and factual obstacles combined with the

complexity of class action practice, it is apparent that the proposed settlement is clearly in the best interest of class members as it approaches the recovery they could recover at trial.

The amount of recovery to the class to the proposed class members is also unquestionably fair, adequate, and reasonable: AT&T Mobility has agreed to refund the amount of all unauthorized third-party mobile content charges paid by the class members, subject to the limitation that if the charge was recurring on a monthly basis based on a subscription that only three times the recurring charge can be recovered. In addition, AT&T Mobility has also agreed to take steps to inform its customers about mobile content, the ability to restrict its purchase through parental controls, and to provide enhanced methods for its customers to dispute unauthorized charges and cancel mobile content subscriptions. Given the strength of this settlement, the parties expect little no significant opposition to the settlement by class members;⁷ in fact, the settlement is supported not only by McFerren and AT&T Mobility, but also by the lead Plaintiffs and their respective counsel in fifteen other separately pending class actions.

Finally, although the present suit is in its infancy, the stage of the related proceedings that formed the foundation of this settlement provides an ample basis on which to evaluate the proposed settlement. The numerous pending class actions involving alleged unauthorized charges for mobile content have allowed the parties to conduct extensive investigations into the

⁷ Given that over 70 million people will receive direct notice of this settlement, there is virtually no likelihood that there will be no filed objections. Class Counsel expects that these objections will fall into four categories. First, there will be “philosophical” objections, i.e. objections made by attorneys, class members, or think tanks who are opposed to class actions and seek to use large settlements as a venue to make political statements. Second, there will be objections filed by serial objectors, who look to object to large class actions and threaten to hold up settlements as a way to extract payouts. Third, due to the existence of the MDL litigation, it is likely that so-called “competing” plaintiffs’ firms will be motivated to search for reasons to object to this settlement, again due to motivations separate and apart from the interests of the class. Finally, there will likely be the “random” objections, filed by pro se objectors or law firms that have not taken the time to understand the settlement and whose objections will reveal that approach. Based both on the procedure employed in reaching the settlement and the results ultimately obtained, Class Counsel believe that these likely objections will not gain any traction.

relevant facts and law. It has allowed the parties to test certain issues through motion practice. In the end, each party had the necessary information to evaluate the strengths and weaknesses of their cases to mediate effectively. Armed with this information, the parties were able to reach the present settlement only after five days of mediation. As such, this settlement is well within the range of possible approval and should be preliminarily approved by this Court.

IV. THE PROPOSED SETTLEMENT CLASS SHOULD BE CERTIFIED

For settlement purposes only, the parties ask the Court to certify the Settlement Class defined above. Likewise, for settlement purposes only, the parties agree this action satisfies the criteria for certification under Georgia law:

(1) The class is so numerous that joinder of all members is impracticable; (2) There are questions of law or fact common to the class; (3) The claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) The representative parties will fairly and adequately protect the interests of the class.

O.C.G.A. § 9-11-23(a). As in most other jurisdictions, to certify a class the court must find that each of the four § 9-11-23(a) requirements are satisfied as well as a finding that “the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy.” *See* O.C.G.A § 9-11-23. Georgia courts deciding whether to certify a class must enter and written order addressing the above factors specifying the findings of fact and conclusions of law on which the court has made its decision; however, the court may rely on the stipulations of the parties regarding whether the factors have been established. O.C.G.A § 9-11-23(f). In this case, the parties have stipulated to the certification of the class for settlement purposes.

A. The Class is Sufficiently Numerous

The first prerequisite to class certification—that the class be so numerous that joinder is impracticable—is a threshold issue. *Murphy v. Hope*, 195 S.E.2d 24, 25 (Ga. 1972). “[A] class action [may] proceed upon a mere estimation of the size of the proposed class.” *Amswiss Int’l Corp. v. Heublein*, 69 F.R.D. 663, 666 (N.D. Ga. 1975). The numerosity requirement is easily satisfied “as few as 40 class members should raise a presumption that joinder is impracticable.” 1 *Newberg* § 3.5; see also *Ikonen v. Hartz Mountain Corp.*, 122 F.R.D. 258, 262 (S.D. Cal. 1988). In this case, the estimated number of class members is in the tens of millions. Given the approximate number of class members, numerosity is easily met.

B. Common Issues of Fact and Law Predominate

Section 9-11-23(a)(2) is satisfied when “[t]here are questions of law or fact common to the class.” Although common questions of law or fact must predominate, the law does not require plaintiffs to prove the complete absence of individual issues because there is no need to burden the Court or the class with requiring each member to pursue their own action. *Trend Star Cont’l Ltd. v. Branham*, 469 S.E.2d 750, 752-53 (Ga. Ct. App. 1996). “The character of the right to be enforced may be common although the facts may be different as to each class member.” *UNUM Life Ins. Co. of Am. v. Crutchfield*, 568 S.E.2d 767, 769 (Ga. Ct. App. 2002)(quoting *Ga. Inv. Co. v. Norman*, 190 S.E. 48, 50 (Ga. 1972)). Common questions predominate where consumers with agreements from a common source seek to enforce common rights and seek common relief. *UNUM Life Ins. Co.*, 568 S.E.2d at 769; see also *J.M.I.C. Life Ins. Co. v. Toole*, 634 S.E.2d 123, 128 (Ga. Ct. App. 2006)(upholding certification of class involving laws of 38 states where the class members executed materially similar form contracts and no evidence was

presented showing the laws of the different states would yield different results among members of the class).

In the present litigation, all class members share the common issue of having entered into substantially similar form contracts for wireless service with AT&T Mobility and were then subsequently billed by AT&T Mobility for mobile content that they allegedly did not authorize. In addition, such common questions for the settlement including whether the settlement is fair, and what is the proper form of notice.

C. Plaintiff's Claims Are Typical of The Claims of the Class

McFerren, Fiddler and Hensley, who seek to be appointed class representatives, must also show that their claims are typical of those of the putative class members. O.C.G.A. § 9-11-23(a)(3); *Life Ins. Co. of Ga. v. Meeks*, 617 S.E.2d 179, 185 (Ga. Ct. App. 2005). “[T]ypicality measures whether a significant nexus exists between the claims of the named representative and those of the class at large.” *Hines v. Widnall*, 334 F.3d 1253, 1256 (11th Cir. 2003) (internal quotation omitted). McFerren, Fiddler and Hensley’s claims are each typical of the claims of the class in that they “arise from the same event or pattern or practice and are based on the same legal theory.” *Kornberg v. Carnival Cruise Lines, Inc.*, 741 F.2d 1332, 1337 (11th Cir. 1984); *see also Cooper v. Southern Co.*, 390 F.3d 695, 714 (11th Cir. 2004)(finding that “[n]either the typicality nor the commonality requirement mandates that all putative class members share identical claims, and . . . factual differences among the claims of the putative members do not defeat certification.” In fact, “a strong similarity of legal theories will satisfy the typicality requirement despite substantial factual differences.” *Appleyard v. Wallace*, 754 F.2d 955, 958 (11th Cir. 1985); *see also Cooper*, 390 F.3d at 714 (finding that named representative need only share the same “essential characteristics” or the larger class). Simply put, when the same

unlawful course of conduct is directed at both the named plaintiff and the members of the proposed class, the typicality requirement is met. *Kennedy v. Tallant*, 710 F.2d 771, 717 (11th Cir. 1983).

In this case, McFerren, Fiddler and Hensley and the proposed class suffered the same or similar injuries that resulted from the Defendant's alleged practice billing consumers for unauthorized charges for mobile content. Accordingly, the Plaintiffs' claims are typical of those of the class and Section 9-11-23(a)(3) is satisfied.

D. Plaintiffs and Their Counsel Adequately Represent the Class

The final Section 9-11-23(a) requirement mandates consideration of the Plaintiffs' ability to "fairly and adequately protect the interests of the class." O.C.G.A § 9-11-239(a)(4).

McFerren, Fiddler and Hensley shoulder the burden of demonstrating their adequacy as class representatives, which necessarily includes a showing that they are members of the class they seek to represent. *McGarry v. Cingular Wireless, LLC*, 599 S.E.2d 34, 36 (Ga. Ct. App. 2004).

The remaining determination of adequacy of representation rests on whether the attorneys representing the class are experienced and competent to conduct the litigation, and whether the plaintiffs' interests are antagonistic to those of the class. *Jones v. Douglas County*, 418 S.E.2d 19, 24 (Ga. 1992). The Court may also require a showing that other putative class members share in the Plaintiff's dissatisfaction with the Defendant's conduct. *See id.* at 25.

In this case, McFerren, Fiddler and Hensley are members of the proposed class and have the same interests as its members—all have been charged for allegedly unauthorized mobile content through the Defendant. Class Counsel has also heard from over 1,000 individuals who have expressed dissatisfaction with AT&T alleged conduct. (McGuire Decl. ¶ 2). Further, proposed Class Counsel and members of the Plaintiff's Steering Committee are well respected

members of their respective legal communities, have regularly engaged in major complex litigation, have had extensive experience in consumer class action lawsuits, including ones similar to the instant case. (See Firm Resumes of KamberEdelson LLC; Boone & Stone; Lockridge Grindal Nauen PLLP; Giskan, Solotaroff, Anderson, & Stewart, and The Jacobs Law Firm Chtd, attached as Exhibits D-H, respectively). Accordingly, McFerren, Fiddler, Hensley and their counsel adequately represent the class.

E. A Class Action is the Superior Method of Adjudicating these Consumer Claims

In addition to satisfying the Section 9-11-23(a) prerequisites, the Court must also determine both that the common questions of law and fact predominate over individual issues and “that a class action is superior to other methods available for the fair and efficient adjudication of the controversy.” O.C.G.A. § 9-11-23(b)(3). In making its determination, pertinent inquires include:

(A) The interest of members of the class in individually controlling the prosecution of . . . separate actions; (B) The extent and nature of any litigation concerning the controversy already commenced by or against members of the class; (C) the desirability or undesirability of concentrating the litigation of claims in the particular forum; and (D) The difficulties likely to be encountered in the management of a class action.

O.C.G.A. § 9-11-23(b)(3)(A-D). In consumer class actions, “[a] class based effort is more effective than an individual consumer in getting a defendant to modify its conduct.” Newberg, § 21.1 at 386. The certification of consumer class actions “enable[s] class members to share in financial recovery which they might otherwise never pursue on their own behalf, [and] also provides an opportunity to educate a segment of the public, those included in the class, or the obligations . . . owed to them.” *Duran v. Credit Bureau, Inc.*, 93 F.R.D. 607, 610 (D. Ariz. 1982)(quoting *Watkins v. Simmons and Clark*, 618 F.2d 398, 404 (6th Cir. 1980).

In this case and especially in the context of settlement, the issues of fact and law common to the class present in this litigation predominate over individual issues. AT&T Mobility's alleged practice of billing its customers for unauthorized charges is common to the class. The only real distinction among class members is the number of unauthorized mobile content charges they were billed for by the Defendant. However, such variations do not defeat class certification, as the exact amount of damages is invariably an individual question. *See Blackie v. Barrack*, 524 F.2d 891, 905 (9th Cir. 1975).

In addition, class relief offers a clearly superior alternative to other forms of adjudicating these cases. The claims of the named Plaintiff and the proposed class are small, discouraging the individual prosecution of their claims. Absent a class action, the Defendant would not be as motivated to provide the service improvements and assurances guaranteed by the proposed settlement and its customers will become more knowledgeable about the pervasiveness of unauthorized charges for mobile content. Additionally, although the present action was recently filed, these matters are currently ripe for settlement as they are the culmination of hard-fought negotiation concerning a multitude of similar suits filed by class counsel and the Plaintiff's Steering Committee that have been pending since January of 2006. It is fitting that the settlement of this class action occurs in this Court, given AT&T Mobility's relationship to the State of Georgia. Finally, because the action will now settle, the Court need not consider issues of manageability relating to trial. *See Amchem Prods. Inc. v. Windsor*, 521 U.S. 591, 620 (1997)(citation omitted) (finding that "[c]onfronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems, for the proposal is that there be no trial"). Accordingly, this Court should enter an order certifying the proposed class for the purposes of this settlement.

V. THE PROPOSED NOTICE AND FORM OF NOTICE SHOULD BE APPROVED

Pursuant to the Settlement Agreement, Defendant has agreed to notify the class of this settlement in several ways. First, AT&T Mobility will publish Notice in USA TODAY and PARADE within ninety (90) days after the preliminary approval of this settlement. Second, direct notice will be provided to current AT&T Mobility customers via a bill insert within 120 days after entry of the preliminary approval order, which will be inserted in customers monthly bill and an electronic copy will be sent via email to those customers who receive bills electronically. Finally, the settlement administrator will erect a settlement website that will serve as a replacement for a typical “long-form” notice and will provide links to the Settlement Agreement and provide for the on-line submission of claims. Copies of the Proposed Notices are attached as Exhibits 2-4 to the Settlement Agreement attached here as Exhibit A.

The proposed notices are neutral in tone and neither promote nor discourage the assertion of claims. The Notices also provide the settlement class members with a detailed explanation of their options to allow each of them to make an informed decision. The parties request the Court to approve the form and methods of notice proposed.

VI. PROPOSED PRELIMINARY SCHEDULE

The parties propose the following schedule leading to the Fairness Hearing for final approval of the settlement:

1. Website Notice Posted by Settlement Administrator: shortly after entry of Preliminary Approval Order (PAO).
2. Notice Published in USA TODAY and PARADE: Within 90 days after PAO entered.
3. Defendant will send out Bill Insert Notice: Within 120 days after PAO entered.
4. Deadline for Opt-outs/Objections: 14 days prior to Final Settlement Hearing

Date.

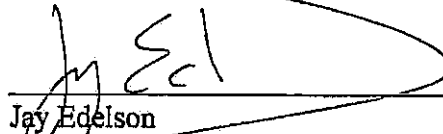
5. Submission of papers in support of final approval of settlement and in response to objections: 7 days prior to Final Settlement Hearing Date.
6. Final Fairness Hearing: Date to be set by the parties and the Court.

CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that (1) the Court certify the requested settlement class, (2) appoint Tracie McFerren, Morris Fiddler and Kristen Hensley as class representatives, (3) appoint Class Counsel as set forth above, (4) preliminarily approve the proposed settlement, (5) approve the form and methods of proposed Notice, and (6) that the Court order the issuance of the Notice and all other actions detailed in the schedule proposed in Section VI above.

Dated: May 28, 2008

KAMBEREDELSON, LLC



Jay Edelson
55 W. Jackson Blvd., Suite 550
Chicago, IL 60604
Telephone: 312.589.6370
Facsimile: 312.913.9401

On Behalf of Plaintiffs and the Class

Dated: _____, 2008

BOONE & STONE LP

LIAISON CLASS COUNSEL

Exhibit A

**IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA**

| | | |
|--|---|--------------|
| TRACIE MCFERREN, individually and on behalf) of a class of similarly situated individuals,) | | |
| |) | |
| Plaintiff, |) | No. |
| |) | |
| v. |) | Judge Bonner |
| |) | |
| AT&T MOBILITY LLC, |) | |
| |) | |
| Defendant. |) | |

CLASS ACTION SETTLEMENT AGREEMENT

THIS CLASS ACTION SETTLEMENT AGREEMENT (the "Agreement") is entered by and among Plaintiff in this Action, for herself and on behalf of the Settlement Class, and AT&T Mobility LLC ("AT&T Mobility") (together, the "Parties"). Subject to Court approval as required by the applicable law and rules, and as provided herein, the Parties hereby stipulate and agree that, in consideration of the promises and covenants set forth in this Agreement and upon the entry by the Court of a Final Order and Judgment, this Action shall be settled and compromised upon the terms and conditions contained herein.

WHEREAS, Plaintiff filed this action captioned *McFerren v. AT&T Mobility LLC*, No. 2008-EV-004400F (Fulton County, GA) (the "Complaint"), alleging claims for damages and injunctive and declaratory relief against AT&T Mobility arising out of the sale and marketing of Third Party Mobile Content, such as ring tones, wallpaper, news and information alerts, and other digital and electronic content to AT&T Mobility wireless telephone subscribers; and

WHEREAS, a number of putative class actions have been filed by Class Counsel and

members of the Plaintiff's Steering Committee against and/or involving AT&T Mobility and certain Third Party Content Providers and related entities, including VeriSign, Inc. ("VeriSign"), M-Qube, Inc. ("M-Qube"), Jamster International, SARL ("Jamster") and Mblox, Inc. ("Mblox") (together with the other entities identified below, the "Third Party Content Providers") regarding the marketing and sale of Third Party Mobile Content. These actions are listed below and defined herein as the Coordinated Actions; and

WHEREAS, other putative class actions have been filed by Class Counsel and members of the Plaintiff's Steering Committee, alleging claims arising out of the imposition of charges for Third Party Mobile Content authorized by the previous owner of a mobile number but not the current owner charged for the Mobile Content. These actions are listed below and defined herein as the Recycled Number Actions; and

WHEREAS, AT&T Mobility has denied and continues to deny all Plaintiff's claims in the Action and other similar actions, and has denied any wrongdoing or liability to all plaintiffs in all of the pending actions; and

WHEREAS, Class Counsel have conducted an examination and investigation of the facts and law relating to the matters set forth in the Complaint regarding the claims and potential defenses of AT&T Mobility; and

WHEREAS, the Parties have engaged in extensive, arms-length negotiations, including multiple, in person sessions in front of Rodney Max, Esquire, Upchurch Watson White & Max Mediation Group in his capacity as a mediator, and reached this settlement agreement; and

WHEREAS, based upon extensive analysis of the facts and the law applicable to Plaintiffs' claims in the Coordinated Actions, and taking into account the burdens and expense of litigation,

including the risks and uncertainties associated with protracted trials and appeals, as well as the fair, cost-effective and assured method of resolving the claims of the Settlement Class, Class Counsel have concluded that this Agreement provides substantial benefits to the Settlement Class and the public as a whole, and is fair, reasonable, adequate and in the best interests of Plaintiff and the Settlement Class; and

WHEREAS, AT&T Mobility has similarly concluded that this Agreement is desirable in order to avoid the time, risk and expense of defending multiple and protracted litigation, and to resolve finally, completely and globally the pending and potential claims of Plaintiff and the Settlement Class, and thus to resolve all of the litigation pending and described above; and

WHEREAS, the Parties agree that all potential Settlement Class Members shall have an individual right to be excluded ("opt out") from the Settlement Class (as provided in this Agreement), such that participation in the settlement benefits shall be voluntary;

NOW, THEREFORE, the Parties stipulate and agree that any and all Settled Claims against all Released Parties regarding the marketing and sale of Third Party Mobile Content to AT&T Mobility subscribers shall be finally settled and resolved on the terms and conditions set forth in this Agreement, subject to Court approval of this Agreement, as a good faith, fair, reasonable and adequate settlement under applicable rules, regulations and laws.

I. DEFINITIONS

As used in this Agreement and the exhibits hereto, in addition to any definitions set forth elsewhere in this Agreement, the following terms shall have the meanings set forth below:

"*Action*" means the case captioned *McFerren v. AT&T Mobility LLC*, No. _____,

(Fulton County GA).

"Account Holder" means any Person with an account for wireless service with AT&T Mobility.

"Account Holder Claims" means any claims arising out or relating to a charge to any Account Holder for Third Party Mobile Content, including all claims that were brought or could have been brought in the Action, the Coordinated Actions or the Recycled Number Actions.

"Agreement" means this Settlement Agreement (including all exhibits hereto).

"Approved Claim" means a claim by a member of the Settlement Class that is a timely (submitted before the Claims Deadline), truthful, and complete claim and that provides at least the following information:

- (i) Full name, current address, home phone number, current or former AT&T Mobility wireless number and/or AT&T Mobility wireless account number;
- (ii) Total amount of refund sought, along with the date, description of charge, and amount of each Third Party Mobile Content charge to be refunded;
- (iii) Certification under oath that each of these charges for which a refund is sought was unauthorized and that no refund was previously sought and/or provided on any such charge.

"AT&T Mobility" means AT&T Mobility LLC, f/k/a Cingular Wireless LLC, and all of its current and former parents, affiliates, subsidiaries, predecessors, successors and assigns.

"AT&T Mobility's Counsel" means Drinker Biddle and Reath LLP and McKenna, Long & Aldridge LLP.

"Claimant" means a person or entity that submits a claim form for a Settlement Benefit.

"Claim Form" means the form attached hereto as Exhibit 1, as it may be revised and as approved by the Court.

"Claims Administration Expenses" means the expenses incurred by the Claims Administrator in handling claims by Class Members.

"Claims Administrator" means the Person selected by the Parties and approved by the Court to oversee the processing and payment of Class Members' claims as set forth in this Agreement. The Parties agree that Rust Consulting shall perform the duties of Claims Administrator and shall act as Claims Administrator.

"Claims Deadline" means the date by which all Claims Forms must be received to be considered timely and shall be set as the date ninety (90) days after entry of the Judgment. The Claims Deadline shall be clearly set forth in the Court Order granting final approval of this Agreement as well as on the front page of all Claims Forms.

"Class Counsel" means Lead Class Counsel consisting of attorneys Jay Edelson, Scott Kamber and Myles McGuire of KamberEdelson, LLC and "Liaison Class Counsel" consisting of David W. Boone, William S. Stone and Aileen Page of Boone & Stone.

"Class Notice" means the form of Court-approved notice (or notices) of this Settlement Agreement that are directed to the Class. The Parties have proposed that the Court approve the notices in the form of Exhibits 2, 3 and 4 to this Agreement.

"Class Representatives" shall mean the plaintiff in this Action, Tracie McFerren, as well as

the following plaintiffs from the Coordinated Actions: Morris Fiddler and Kristen Hensley.

"Coordinated Actions" means the following pending class actions filed or pending in other state or federal courts asserting similar class claims whose plaintiffs and counsel have agreed to the terms and conditions of this settlement: *Baker v. Sprint, New Motion, Inc.*, 2007-46363 (Fl. St. Ct.); *Dedek v. AT&T Mobility LLC*, Case No. BC387728, (Sup. Ct. L.A. County); *Fiddler v. AT&T Mobility LLC, et al.*, Civ. A. No. 08-0416, (N.D. Ill.); *Goddard v. Google, Inc.* BC 667876 (Cal.St.Ct.); *Gray v. Verizon, Mobile Messenger Americas, Inc.*, 07-36302 (Fl. St. Ct.); *Hensley v. AT&T Mobility LLC* (Dist. Ct., 4th Jud. Dist., Hennepin Cty, Minn.); *Jiran v. AT&T Mobility LLC, et al.*, Civ. A. No. 08-00013, (N.D. Cal.), *Paluzzi v. mBlox, et al.*, No: 2007-CH-37213 (Cook Cty, Illinois), *Thielen v. Buongiorno USA, Inc.*, 1:06-cv-00016 (W.D. Mich.); *Walsh v. mBlox, et al.*, No. BC. BC 382356 (Cal.St.Ct.), *Warren et al. v. Verisign, et al.* No. 6:2007cv02043 (M.D. FL.) and *White v. AT&T Mobility* (Supreme Court of New York County) and the Recycled Number Actions.

"Court" means the Superior Court of Fulton County, Georgia.

"Defendant" means AT&T Mobility.

"Effective Date" means the date on which the Judgment becomes final and not subject to appeal under the applicable law or, in the event of a timely appeal from the entry of the Judgment, the date on which such appeal is resolved and the Judgment is not subject to further review.

"Fairness Hearing" means the hearing to be conducted by the Court to determine the fairness, adequacy and reasonableness of this Settlement Agreement in accordance with applicable jurisprudence.

"Judgment" means the Order and Final Judgment to be entered by the Court, approving this Agreement without material alterations, as fair, adequate and reasonable in accordance with

applicable jurisprudence, confirming the certification of the Class, and issuing such other findings and determinations as the Court or the parties deem necessary and appropriate to effectuate the terms of this Agreement.

“Mediator” means Rodney Max, Esquire of Upchurch Watson White & Max Mediation Group.

“Mobile Content” refers to content, applications, and goods and services such as ring tones, wallpaper, news and information alerts, and other digital and electronic content charged to the wireless bill of an Account Holder.

“Nationwide” means the 50 United States and its territories.

“Notice Date” means the date upon which Class Notice is first disseminated to the Class.

“Notice Expenses” means all reasonable costs and expenses expended in the execution of the Notice Plan, including (i) all reasonable costs and expenses incurred in connection with preparing, printing, mailing, disseminating, posting, promoting, emailing, internet hosting and publishing the Notice to the Class of the proposed Settlement, identifying and notifying Class Members and informing Class Members of the proposed settlement and (ii) any necessary notice and notice-related expenses.

“Notice of Intention to Appear and Object” is the written communication that may be filed by a Class member in order to object to this Agreement.

“Notice Plan” means the proposed plan of disseminating notice of the Agreement to Class Members.

“Opt-Out Period” means the period for filing a Request For Exclusion to be set by the Court in this action. The deadline for filing Opt-Outs will be clearly set forth in the Class Notice.

"Person" means any individual, corporation, trust, partnership, limited liability company or other legal entity and their respective successors or assigns.

"Plaintiff" means Tracie McFerren and the Settlement Class.

"Plaintiff's Steering Committee" means the committee consisting of chairman Robert Shelquist of Lockridge Grindal Nauen, P.L.L.P., Orin Giskan, of Solotaroff, Anderson & Stewart, LLP, David Healey of the Offices of David Healy and John Jacobs of The Jacobs Law Firm, Chtd.

"Preliminary Approval" means the Court's conditional certification of the Class, preliminary approval of this Agreement, and approval of the form and dissemination of Class Notice.

"Recycled Number Actions" means actions arising out of the imposition of charges for Third Party Mobile Content authorized by the previous owner of a mobile number but not the then-current owner such as *Jiran v. AT&T Mobility LLC, et al.*, Civ. A. No. 08-00013, (N.D. Cal.), *Valdez v. Buongiorno USA, Inc., m-Qube, Inc.* 4:07-cv-06496-CW (N.D. Cal.); *Knox v. m-Qube, Inc.* 1:07-cv-10124 (D.Mass.).

"Released Party" means Defendant (as defined above) and the Third Party Providers (as defined below) including their respective predecessors, successors, assigns, parents, subsidiaries, divisions, departments, and affiliates, and any and all of their past, present and future officers, directors, employees, stockholders, partners, agents, servants, successors, attorneys, representatives, subrogees and assigns of any of the foregoing.

"Releasing Party" means Plaintiff and each member of the Settlement Class and any Person claiming by or through him/her/it as his/her/its spouse, child, heir, associate, co-owner, attorney, agent, administrator, devisee, predecessor, successor, assignee, representative of any kind, shareholder, partner, director, employee, or affiliate.

"Request For Exclusion" is the written communication that must be filed with the Claims Administrator that is postmarked on or before the end of the Opt Out Period if a Class Member wishes to be excluded from the Settlement Class.

"Settled Claim" means any claim, liability, right, demand, suit, matter, obligation, damage, loss or cost, action or cause of action, of every kind and description that the Releasing Party has or may have, including assigned claims, whether known or unknown, asserted or unasserted, latent or patent, that is, has been, could reasonably have been or in the future might reasonably be asserted by the Releasing Party either in the Action or in any other action or proceeding in this Court or any other court or forum, regardless of legal theory, and regardless of the type or amount of relief or damages claimed, against any of the Released Parties arising out or relating to a charge to any Account Holder for Third Party Mobile Content, including all claims that were brought or could have been brought in the Action, the Coordinated Actions or the Recycled Number Actions, and involving any allegation on any basis that such charge was unauthorized. Settled Claims include, *inter alia*, claims that the Third Party Mobile Content charges were the result of fraudulent or misleading marketing or billing practices, the actions of minors who did not have the capacity to agree to such charges, or that were the result of receiving a "recycled" cellular telephone number. Without limiting the generality of the foregoing, Settled Claim shall include, with regard to the foregoing subject matter:

- (1) any class, group, collective or individual claim for any breach or violation of any federal or state statute, case law, common law or other law;
- (2) any claim for breach of any duty imposed by law, by contract or otherwise; and

(3) any claim for damages, injunctive relief, declaratory relief, class damages or relief, penalties, punitive damages, exemplary damages, restitution, rescission or any claim for damages based upon any multiplication or enhancement of compensatory damages associated with the above.

"Settlement Benefit" means the benefits a Settlement Class Member may receive pursuant to this Settlement Agreement.

"Settlement Class" shall consist of all current and former AT&T Mobility Account Holders Nationwide who, at any time from January 1, 2004 to the Notice Date, were billed for Third Party Mobile Content. Excluded from the Class are the following: the Defendant, the Third Party Providers, the Claims Administrator, the Mediator, and any of their respective parent, subsidiary, affiliate or control person of the Defendant, as well as the officers, directors, agents, servants, or employees of the Defendant, any trial judge presiding over this case over any of the actions which comprise the Action or Coordinated Actions, and the immediate family members of any such Person(s).

"Special Master" means an independent person agreed upon by the parties to evaluate those claims that have been challenged by AT&T Mobility or rejected by the Claims Administrator after an initial appeals process.

"Third Party Mobile Content" means Mobile Content sold by Third Party Providers directly to AT&T Mobility wireless customers and charged to the wireless bill of one of AT&T Mobility's wireless customers, and excludes Mobile Content sold through the AT&T Media Mall or directly by AT&T Mobility to such Account Holders.

"Third Party Providers" means entities other than AT&T Mobility who advertise, aggregate billing for, offer, and/or sell Third Party Mobile Content, including Third Party Mobile Content

Subscriptions, directly to AT&T Mobility's wireless customers as well as their marketing agents and/or licensors, and includes VeriSign, M-Qube, Jamster International SARL, and Mblox. Providers who sell Mobile Content on or through AT&T Mobility's Media Mall are not thereby Third Party Providers for the purposes of such sales.

II. FOR SETTLEMENT PURPOSES ONLY

A. This Agreement, whether or not consummated, and any proceedings taken pursuant to this Agreement are for settlement purposes only, and neither the fact of, nor any provision contained in this Agreement or its exhibits, nor any action taken hereunder shall constitute, be construed as, or be admissible in evidence as any admission of the validity of any claim or any fact alleged by Plaintiff in this Action or in any other pending action or of any wrongdoing, fault, violation of law, or liability of any kind on the part of AT&T Mobility or admission by AT&T Mobility of any claim or allegation made in this Action or in any other action, nor as an admission by Plaintiff, Settlement Class Members or Class Counsel of the validity of any fact or defense asserted against them in this Action or in any other action.

B. This Agreement is without prejudice to the rights of AT&T Mobility to: (i) seek to compel arbitration of any claim in any forum, excepting claims arising under this Agreement by class members who have not opted-out; (ii) oppose Class certification in this Action should this Agreement not be approved or implemented for any reason; (iii) oppose certification in any other proposed or certified class action; or (iv) use the certification of the Class to oppose certification of any other proposed or existing class arising out of or related to the Settled Claims.

III. REQUIRED EVENTS AND COOPERATION BY THE PARTIES

A. Preliminary and Final Approval

Promptly after execution of this Agreement, Class Counsel shall submit this Agreement to the Court for its Preliminary Approval and shall move the Court for one or more orders which by their terms shall:

1. Appoint the Class Representatives as the representatives of the Settlement Class;
2. Appoint Lead and Interim Class Counsel, as well as the Plaintiff's Steering Committee;
3. Preliminarily and conditionally certify the Class under Ga. Code Ann., § 9-11-23 for settlement purposes only and preliminarily approve this Agreement for purposes of issuing notice to the Class;
4. Approve the form and contents of the Settlement Class Notice and the method of its dissemination to Class Members;
5. Provides for appropriate confirmatory discovery; and
6. Schedule the Fairness Hearing to review comments and/or objections regarding this Agreement, to consider its fairness, reasonableness and adequacy, and the application for an award of attorneys' fees and reimbursement of expenses and to consider whether the Court shall issue a Judgment approving the Settlement, granting Class Counsel's application for fees and expenses, and dismissing the Action with prejudice.

B. Cooperation

The Parties shall, in good faith, cooperate, assist and undertake all reasonable actions and steps in order to accomplish these required events on the schedule set by the Court.

C. Dismissal of Coordinated Actions

Class Counsel shall dismiss, with prejudice, the Coordinated Actions or, to the extent appropriate, amend the pleadings to limit the respective classes to exclude Settled Claims, no later than thirty (30) days following the Effective Date, and shall cooperate in seeking stays of such actions as to Settled Claims prior to the Effective Date.

D. Certification of Settlement Class

For settlement purposes only, AT&T Mobility and the Settlement Class stipulate to the certification of the Settlement Class, as defined above.

This Agreement is contingent upon the Court finally certifying the Settlement Class as defined in the preceding paragraph. Should the Court fail to certify the Settlement Class substantially as defined in the preceding paragraph, the Parties shall each have the option of rescinding this Agreement within 10 business days of the date the Court grants final certification of the class in this Action. Should the Court fail to certify a class or approve this Agreement, this Agreement may not be used by the Parties for any purpose related to class certification.

IV. SETTLEMENT BENEFITS

A. Service Improvements and Assurances. AT&T Mobility has agreed that it shall, as soon as practicable but in no event later than a date 45 days after preliminary approval is entered in this action, institute the following:

1. AT&T Mobility shall include in its Wireless Service Agreement a disclosure concerning Mobile Content substantially consistent with the following:

Mobile Content

I understand that wireless devices may be used to purchase goods, content, and services (including subscription plans) like ring tones, graphics, games, horoscopes and news alerts from AT&T and other companies ("Mobile Content"). I understand that I am responsible for all authorized charges associated with such purchases from any device assigned to my account, that these charges will appear on my bill (including charges on behalf of other companies), and that such purchases can be restricted by using parental controls available from your AT&T salesperson, at www.wireless.att.com, or by calling AT&T.

2. AT&T Mobility shall post on its website a disclosure concerning Mobile Content substantially consistent with the following:

Your wireless devices may be used to purchase goods, content, and services (including subscription plans) like ring tones, graphics, games and news alerts, from AT&T or other companies ("Mobile Content"). You are responsible for all authorized charges associated with such purchases from any device assigned to your account. Charges for Mobile Content will appear on your bill (including charges on behalf of other companies), and Mobile Content purchases can be restricted by use of parental controls or similar features. Parents should consider using parental controls available from

AT&T. Please visit our website at www.wireless.att.com or speak with an AT&T customer representative for further information.

3. All bills, electronic and paper, will disclose the telephone number for Account Holders who seek to dispute a charge to call and reach an appropriate customer service representative as well as the website address for performing the same.

4. AT&T Mobility will continue to provide and enhance as necessary the systems, processes and training to support the ability for Account Holders to have a free and ready means to address billing issues and cancel Third Party Mobile Content subscriptions via a single point of contact or through an equally effective means to address such issues.

B. Refund Benefit.

1. *Refunds.* AT&T Mobility shall credit or refund any current or former Account Holder who submits a valid and timely Claim Form for the amount of past unauthorized charges for Third Party Mobile Content purchases ("Settlement Benefit") billed to a member of the Settlement Class, subject to the provisions of this Settlement Agreement and in accordance with the claims process set forth herein.

2. *Subscription Charge Claims.* With respect to any Account Holder Claims relating to charges associated with Third Party Mobile Content sold by subscription, the Settlement Benefit shall be capped at an amount equal to three times the monthly subscription charge.

V. CLAIMS PROCESS

A. Claims Administrator's Duties The Claims Administrator shall, under the supervision of the Court, administer the relief provided by this Settlement Agreement by resolving claims in a rational, responsive, cost effective and timely manner. The Claims

Administrator shall maintain reasonably detailed records of its activities under this Agreement. The Claims Administrator shall maintain all such records until expiration of the Term of Agreement and such records will be made available to Class Counsel and AT&T Mobility's Counsel. The Claims Administrator shall also provide reports and other information to the Court as it may require. The Claims Administrator shall provide Class Counsel and AT&T Mobility's Counsel with such information concerning notice, administration and implementation of the Settlement. Should the Court request, the Parties, in conjunction with the Claims Administrator, shall submit a timely report to the Court summarizing the work performed by the Claims Administrator, including a report of all amounts paid to Class Members. The Claims Administrator shall cause a website to be created containing claims information and relevant documents. The Parties shall agree on all information and documents to be posted on this website.

B. Written and Electronic Claims Submission

Settlement Class Members are entitled to Settlement Benefit(s) through submission of an Approved Claim. The claims process shall be conducted online through the claims website administrated by the Claims Administrator. Any Class member unable to complete an online Claim Form may call a toll free number, provide their name and address, and receive a paper Claim Form. Paper Claim Forms may be mailed to the Claims Administrator and must be postmarked on or before the Claims Deadline. The paper Claim Form agreed to by the Parties is attached hereto as Exhibit 1. The Claims Administrator shall reject any claims not submitted in accordance with the above provided, however, that nothing in this provision shall be construed to prevent the Claims Administrator, in its discretion, from permitting a Settlement Class Member to remedy deficiencies in such Settlement Class Member's Claim Form.

C. Processing and Validation of Claims

1. **Claims Must be for Unauthorized Charges.** All claims shall be validated by the Claims Administrator to establish that the Third Party Mobile Content charges associated with each claim were not authorized.
2. **Claims Administrator Review.** The Claims Administrator may reject a claim, or any part of a claim, where there is evidence of customer abuse or fraud or where indicia of authorization are present. For example, the Claims Administrator may reject a claim or any portion of a claim if it appears that the Claimant has previously received multiple refunds for the same type of charge that is being requested for refund in the Claim Form, provided that such charges do not arise from a subscription cancelled by the Account Holder and not reactivated by an authorized user on the account.
3. **Review for Indicia of Authorization.** The Claims Administrator shall make the determination by a totality of the circumstances and shall have the right to request additional information. To determine whether the charge was unauthorized, the Claims Administrator may review, *inter alia*, the Claimant's Third Party Mobile Content purchase history, including but not limited to the following:
 - (a) whether a refund was previously issued for the charges associated with a claim;
 - (b) whether refunds were previously given for other Third Party Mobile Content charges associated with the wireless number tied to a claim;
 - (c) if refunds were previously given, the amount of the refunds given for the charges associated with the wireless number tied to a claim;
 - (d) the number and frequency of similar Third Party Mobile Content charges associated

with the wireless number tied to a claim;

(e) the amount of similar charges associated with the wireless number tied to a claim;

(f) the existence of charges from a different wireless number on the same account tied to a claim;

(g) the reputation of the source of the Third Party Mobile Content;

(h) the nature and type of the Third Party Mobile Content;

(i) the number of telephone lines associated with the account;

(j) a comparison of the date the Third Party Mobile Content was ordered and the date the account was opened;

(k) whether the charges were voluntarily paid; and

(k) any explanation given by the Account Holder.

4. *Subscription Charges.* As provided in Section IV.B.2, the Settlement Benefit for any claim made for a recurring charge that was billed and paid for by the Claimant for more than three successive billing cycles shall be limited to three times the amount of such recurring charges appearing on a monthly basis. For example, if a Claimant requests refund for four months of a recurring monthly charge, the Claims Administrator may refund three months of the recurring charge but will reject the claim for refund of the fourth month of this charge.

5. *Previously Refunded Amounts.* The Claims Administrator shall not provide a Settlement Benefit for any charge associated with a claim that has been previously refunded by AT&T Mobility or a Third Party Provider.

D. Resolution Procedure For Challenged or Rejected Claims

1. *Abuse of Discretion by Claims Administrator.* Both AT&T Mobility and Plaintiffs' Counsel shall have the right to challenge systematic abuse(s) in processing or handling of the claims as submitted by Settlement Class members and such challenges will be timely decided by the Mediator. The Parties agree that the Claims Administrator shall thereafter follow the decision of the Mediator resulting from any such challenge.

2. *Challenging Individual Claims.*

a. AT&T Mobility may challenge any claim, and the Claim Form will disclose the right of AT&T Mobility to challenge claims.

b. AT&T Mobility shall have thirty (30) days upon receiving notice of such approval to dispute any claim for a Settlement Benefit approved by the Claims Administrator. Any Settlement Class member whose claim for a Settlement Benefit is denied by the Claims Administrator shall also have thirty (30) days upon receiving notice of such denial to dispute the denial of the claim. In either case, each party shall receive written notice that the denial/approval of the claim is being disputed and shall be provided an Appeal Form wherein the appealing party must provide a detailed written explanation as to why the Claims Administrator erred in its denial/approval of the claim for a Settlement Benefit.

c. All Appeal Forms will be submitted to an Appeal Panel that will be comprised of three (3) members: one (1) member to be appointed by AT&T; one member (1) to be appointed by the Claims Administrator; and one (1) member to be appointed by Plaintiffs' Counsel. The Appeal Panel shall meet at regularly determined times to decide all appeals based solely on the Appeal Forms submitted and AT&T records. There will be no in-person hearings

of any kind. In order to overrule the decision of the Claims Administrator to approve/deny a claim for a Settlement Benefit, the party submitting the appeal must garner two (2) votes from the Appeal Panel.

d. If the Appeal Panel affirms the decision of the Settlement Administrator, the losing party has a right to one final appeal to have the issue of the denial/approval determined by a Special Master, to be either jointly agreed to by the Parties, or, if no such agreement is reached, as selected by the Mediator. All decisions regarding the denial/approval of any claim submitted and ruled upon by the Special Master are final.

VI. SETTLEMENT PAYMENTS

A. AT&T Mobility shall be solely responsible to pay all Claims Administration Expenses, including but not limited to reasonable fees and costs for the Special Master, and all Notice Expenses for a Notice Plan as described in this Agreement, as well as the Fee Award approved by the Court to Class Counsel.

B. The Claims Administrator shall request funds from AT&T Mobility in amounts, from time to time, sufficient to timely pay: (i) the costs of administration of this Settlement; (ii) the attorneys' fees and costs awarded by the Court to Class Counsel; and (iii) all Approved Claims. The Claims Administrator shall, in its discretion, request funds periodically and from time to time only as necessary to make payments due under this Agreement.

C. AT&T Mobility will use its best efforts to pay an Approved Claim as soon as practicable following approval by the Claims Administrator, but in no event more than 90 days following such approval. The Claims Administrator shall pay all Approved Claims (not paid by AT&T Mobility via a bill credit) by check and mail them to the Claimant via first-class mail.

VIII. NOTICE TO THE CLASS

A. Upon Preliminary Approval of this Agreement (and as the Court may direct), the Parties (or their designee) shall cause the Class Notice describing the Fairness Hearing and the terms of the Settlement embodied herein to be disseminated to potential Class Members as provided herein. Notice shall comport with due process and be effectuated pursuant to a Notice Plan.

B. The Notice Plan shall include:

1. Publication Notice shall be made in a single publication each in USA TODAY WEEKEND and PARADE, to be published within ninety (90) days of receipt of Preliminary Approval of the Settlement. The text of such notice is provided in Exhibit 2.

2. A paper Bill Insert Notice shall be provided to current direct bill wireless Account Holders who receive bills by paper and an electronic Bill Insert Notice shall be provided to Account Holders who receive bills electronically. The text of such notice is provided in Exhibit 3. Bill Insert Notice will be completed within one hundred and twenty (120) days after Preliminary Approval of the Settlement.

3. Internet Publication Notice. Immediately following Preliminary Approval of the Settlement, Website Notice shall be provided on the website to be administered by the Claims Administrator. The text of such Notice is provided in Exhibit 4.

C. The Class Notice shall advise Class Members of their rights, including the right to opt-out and/or comment or object upon the Settlement Agreement or its terms. The Notice shall provide that any objection to the proposed Settlement Agreement, and any papers submitted in support of said objection, shall be received by the Court at the Fairness Hearing, only if, on or before a date approved by the Court and to be specified in the Class Notice, the Person making an objection

shall file notice of his or her intentions to do so and shall file copies of such papers he or she proposes to submit at the hearing with the Clerk of the Court and mail, hand or overnight delivery service to both Class Counsel and AT&T Mobility's Counsel on or before the date specified in the Class Notice.

D. The cost of the Notice, the Notice Plan as outlined herein, and the dissemination of the Notice shall be borne solely by AT&T Mobility.

IX. OPT-OUT AND OBJECTIONS

A. A Class Member may opt out of the Class at any time during the Opt-Out Period, as will be outlined in the Court-approved Notice. Opt-outs must be post-marked by a date approved by the Court and specified in the Notice. In order to exercise the right to opt out, the Class Member must complete and return a Request For Exclusion to the Claims Administrator during the Opt-Out Period. Except for those potential Class Members who have properly opted out, all Class Members will be deemed a Class Member for all purposes under this Agreement. Any potential Class Member who elects to opt out of the Class shall not (i) be bound by any orders or judgments entered in this Action; (ii) be entitled to relief under or be affected by this Agreement; (iii) gain any rights by virtue of this Agreement; or (iv) be entitled to object to any aspect of this Agreement. The Request For Exclusion must be personally signed by the Person requesting exclusion. So called "mass" or "class" opt-outs shall not be allowed.

B. Any Settlement Class Member who intends to object to the Settlement Agreement must include his/her name and address, include all arguments, citations, and evidence supporting the objection. An objecting Class Member must state, in writing, all objections and the basis for any such objection(s), and provide a statement whether the Objector intends to appear at the Fairness

Hearing, either with or without counsel. Objections must be post-marked by a date approved by the Court and specified in the Notice. Any Settlement Class Member who fails to timely file a written objection and notice of his or her intent to appear at the Fairness Hearing pursuant to this paragraph or as detailed in the Notice, shall not be permitted to object to the Class Settlement at the Fairness Hearing, and shall be foreclosed from seeking any review of the Class Settlement by appeal or other means.

X. AT&T MOBILITY'S RIGHT OF WITHDRAWAL

A. If an excess of a reasonable amount of Class Members, in an amount to be agreed upon by the Parties and approved of by the Court prior to Notice being effectuated, timely file valid opt-out requests, AT&T Mobility shall have the right to terminate from this Agreement. AT&T Mobility shall exercise such withdrawal right, if at all, no later than ten (10) business days after being advised by the Claims Administrator in writing of the number of opt-out requests following the end of the Opt-Out Period. In the event AT&T Mobility exercise its right of termination, AT&T Mobility shall promptly notify Class Counsel and cause the Claims Administrator to notify the Class by posting information on the Settlement website and e-mailing information to those Class Members who provided an e-mail address to the Claims Administrator.

XI. EXCLUSIVE REMEDY; DISMISSAL OF ACTION; JURISDICTION OF COURT

A. This Agreement shall be the sole and exclusive remedy for any and all Settled Claims of all Class Members against the Released Parties. No Released Party shall be subject to liability or expense of any kind to any Class Member with respect to any Settled Claim. Upon entry of the Judgment pursuant to the Fairness Hearing, each and every Class Member shall be permanently barred and enjoined from initiating, asserting and/or prosecuting any Settled Claim(s) against any

Released Party in any court or forum.

B. The Parties agree that the Court shall retain exclusive and continuing jurisdiction of the Action, Parties, Class Members and the Claims Administrator to interpret and enforce the terms, conditions, and obligations under this Agreement.

XII. RELEASES

A. Upon entry of the Judgment, each Settlement Class Member who has not validly opted out of the Settlement, shall be deemed to and does hereby release and forever discharge each Released Party of and from liability for any and all Settled Claims.

B. Upon entry of Judgment without further action, for good and valuable consideration, Plaintiff, on behalf of herself and the Settlement Class and as the representative of the Settlement Class, shall expressly, and all Settlement Class Members shall be deemed to have, and by operation of the final judgment contemplated by this Agreement shall have, fully, finally, and forever expressly waived and relinquished with respect to Settled Claims, to the fullest extent permitted by law, any and all provisions, rights, and benefits of section 1542 of the California Civil Code and any and all similar provisions, rights, and benefits conferred by any law of any state or territory of the United States or principle of common law that is similar, comparable, or equivalent to section 1542 of the California Civil Code, which provides: "A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

XIII. CLASS COUNSEL FEES AND COSTS AND INCENTIVE AWARDS

A. **The Fee Award.** In addition to the consideration provided to the Claimants in Section IV, above, AT&T Mobility has agreed to pay Class Counsel, subject to Court approval, \$4.3

Million (the "Maximum Fee Amount") in attorneys' fees and reimbursement of costs (the "Fee Award"). AT&T Mobility agrees that the Maximum Fee Amount is fair and reasonable and will not object to or otherwise challenge Class Counsel's application for reasonable attorneys' fees and for reimbursement of costs and other expenses if limited to the Maximum Fee Amount. Class Counsel has, in turn, agreed not to seek more than the Maximum Fee Amount from the Court.

B. Payment of the Fee Award. Notwithstanding any appeal or objection or challenge to the Settlement or to the Fee Award, provided Lead Class Counsel provides adequate security for the recovery of amounts paid in the event of reversal of the award of fees on appeal, AT&T Mobility shall pay (by wire) to Lead Counsel the Fee Award approved by the Court within thirty (30) days after entry of the order approving such award of fees or reimbursement of expenses. The adequacy of security shall be determined by AT&T Mobility in its sole discretion. Absent the provision of such security, AT&T Mobility shall pay the Fee Award to Lead Class Counsel by wire transfer within thirty (30) days of the Effective Date.

C. Class Representatives' Incentive Award: In addition to any award under the Settlement, and in recognition of their efforts on behalf of the Class, the Class Representatives shall, subject to Court approval, receive and award collectively of the sum of \$10,000.00 as appropriate compensation for their time and effort serving as the Class Representative in this litigation. Such amount shall be paid by AT&T Mobility to Lead Class Counsel within twenty (20) days after the Effective Date.

XIV. SETTLEMENT APPROVAL ORDER

A. This Agreement is subject to and conditioned upon the issuance by the Court of the Judgment which finally certifies the Settlement Class and grants final approval of this Agreement in accordance with applicable jurisprudence, and providing the relief specified below, which relief shall be subject to the terms and conditions of this Agreement and the Parties' performance of their continuing rights and obligations hereunder. Such Judgment shall:

1. Confirm the certification, for settlement purposes only, of the Settlement Class under applicable jurisprudence;
2. Dismiss all complaints in the Action as with prejudice and without costs;
3. Decree that neither the Judgment nor this Agreement constitute an admission by AT&T Mobility of any liability or wrongdoing whatsoever;
4. Bar and enjoin all Class Members from asserting against any Released Party any and all Settled Claims which the Class member had, has, or may have in the future;
5. Release each Released Party from the Settled Claims which any Class Members have, had, or may have in the future, against such Released Party;
6. Determine that this Agreement is entered into in good faith, is reasonable, fair and adequate, in the best interest of the Class; and
7. Preserve the Court's continuing and exclusive jurisdiction over the Parties to this Agreement, including AT&T Mobility and all Class Members, to administer, supervise, construe and enforce this Agreement in accordance with its terms for the mutual benefit of the Parties, but without affecting the

finality of the Judgment.

B. In the event that the Court or any appellate court enters an order altering this Settlement Agreement in a way that materially and adversely affects AT&T Mobility or Plaintiff, within five (5) business days from the date the Court or appellate court enters such an order, AT&T Mobility or Plaintiff, as the case may be, may terminate this Settlement Agreement by giving written notice of its intent to do so to the opposing party's counsel.

XV. REPRESENTATIONS AND WARRANTIES

AT&T Mobility represents and warrants (i) that it has all requisite corporate power and authority to execute, deliver and perform this Agreement and to consummate the transactions contemplated hereby; (ii) that the execution, delivery and performance of this Agreement and the consummation by it of the actions contemplated herein have been duly authorized by all necessary corporate action on the part of AT&T Mobility; and (iii) that this Agreement has been duly and validly executed and delivered by AT&T Mobility and constitutes its legal, valid and binding obligation.

XVI. MISCELLANEOUS PROVISIONS

A. Entire Agreement

This Agreement, including all exhibits hereto, shall constitute the entire Agreement among the Parties with regard to the subject of this Agreement and shall supersede any previous agreements, representations, communications and understandings among the Parties with respect to the subject matter of this Agreement. This Agreement may not be changed, modified, or amended except in writing signed by all Parties, subject to Court approval. The Parties contemplate that, subject to Court approval, the exhibits to this Agreement may be modified by subsequent Agreement of AT&T

Mobility and Class Counsel prior to dissemination to the Class.

B. Governing Law

This Agreement shall be construed under and governed by the laws of the State of Georgia, applied without regard to laws applicable to choice of law.

C. Execution by Counterparts

This Agreement may be executed by the Parties in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. Facsimile signatures or signatures sent by e-mail shall be treated as original signatures and shall be binding.

D. Confirmatory Discovery

In addition to the discovery received and investigation conducted by Class Counsel, AT&T Mobility shall provide to Class Counsel reasonable additional discovery and information as necessary to confirm the material representations made by AT&T Mobility which form the basis of this Settlement, and the Parties shall cooperate in seeking any third-party discovery as may be necessary and appropriate, such additional discovery to be completed prior to the Fairness Hearing.

E. Notices

Any notice, instruction, application for Court approval or application for Court orders sought in connection with this Agreement or other document to be given by any Party to any other Party shall be in writing and delivered personally or sent by registered or certified mail, postage prepaid, if to AT&T Mobility to the attention of AT&T Mobility's respective representatives and to Class Counsel on behalf of Class Members, or to other recipients as the Court may specify.

All notices to the Parties or counsel required by this Agreement, except Settlement Class

member opt outs and objections, shall be made in writing and communicated by fax and mail to the following addresses:

If to Plaintiff or Plaintiff's Counsel or Lead Counsel:

Jay Edelson, Esq.
KamberEdelson, LLC
53 West Jackson Boulevard, Suite 550
Chicago, Illinois 60604

If to AT&T Mobility or AT&T Mobility's Counsel:

Seamus C. Duffy
Drinker, Biddle and Reath LLP.
One Logan Square
Philadelphia, Pennsylvania 19103-6996

David L. Balser
McKenna, Long and Aldridge LLP
303 Peachtree Street, NE
Suite 5300
Atlanta, GA 30308

F. Dismissal

Plaintiffs or Class Counsel in the affiliated Coordinated Actions shall, upon final approval of the settlement in this Action, obtain dismissal of their respective class action complaints.

G. Miscellaneous Provisions

This Agreement shall be binding upon and inure to the benefit of the heirs, successors, assigns, executors and legal representatives of all parties to the Settlement.

Subject to Court approval, the Parties may agree to reasonable extensions of time to carry out any of the provisions of this Agreement.

The determination of the terms of, and the drafting of, this Agreement has been by mutual agreement after negotiation, with consideration by and participation of all Parties hereto and their