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13 UNITED STATES DISTRICT COURT
14 CENTRAL DISTRICT OF CALIFORNIA
15 WESTERN DIVISION

16 JENNY BROWN and CARMEN
17 MONTIJO, on behalf of themselves
and all others similarly situated,

18 Plaintiffs,

19 v.

20 DIRECTV, LLC,

21 Defendant.

Case No. 2:13-cv-01170-DMG-E

**PLAINTIFF'S NOTICE OF
MOTION AND UNOPPOSED
MOTION FOR FINAL APPROVAL
OF CLASS ACTION SETTLEMENT**

Date: February 24, 2023
Time: 10:00 A.M.
Place: Courtroom 8C

Hon. Dolly M. Gee

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1 PLEASE TAKE NOTICE that on February 24, 2023, at 10:00 a.m., or as
2 soon thereafter as the matter may be heard, before the Honorable Dolly M. Gee in
3 Courtroom 8C of the United States District Court, Central District of California,
4 Western Division, located at 350 West 1st Street, Los Angeles, CA, 90012, Plaintiff
5 Jenny Brown will and hereby does move this Court pursuant to Federal Rule of
6 Civil Procedure 23, for an Order:

- 7 A. Granting final approval of the Class Action Settlement;
- 8 B. Confirming certification of the Settlement Class for purposes of
9 Settlement; and
- 10 C. Finding that notice to the Class was directed and completed in a
11 reasonable manner.

12 Pursuant to Local Rule 7-3, counsel for Plaintiff and DIRECTV met and
13 conferred, including on January 12, 2023 and January 18, 2023, to discuss the
14 contents of this Motion. Plaintiff can report that DIRECTV does not oppose this
15 motion.

16 Plaintiff’s motion is based upon this Notice of Motion and Motion; the
17 Memorandum of Points and Authorities in support of this Motion; BrownGreer’s
18 Status Report Related to Notice; the pleadings, records, and files in this action,
19 including Plaintiff’s Motion for Preliminary Approval (Dkt. 516); and such other
20 and further evidence and argument as may be presented at the time of the hearing.

21
22 Dated: January 20, 2023

Respectfully submitted,

23 By: /s/ Daniel M. Hutchinson
24 Daniel M. Hutchinson

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13 **UNITED STATES DISTRICT COURT**
14 **CENTRAL DISTRICT OF CALIFORNIA**
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18 v.

19 DIRECTV, LLC,

20 Defendant.

Case No. 2:13-cv-01170-DMG-E

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFF'S UNOPPOSED
MOTION FOR FINAL APPROVAL
OF CLASS ACTION SETTLEMENT**

Date: February 24, 2023
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Hon. Dolly M. Gee

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INTRODUCTION

1
2 Plaintiff Jenny Brown (“Plaintiff”) respectfully moves the Court for final
3 approval of this nationwide class action settlement (“Settlement”) under the
4 Telephone Consumer Protection Act (“TCPA”).¹ This Settlement is the product of
5 over a decade of thorough litigation until the eve of trial. It provides an all-cash,
6 non-reversionary settlement fund of \$17,000,000 to fully and finally resolve all
7 class claims.² The Court preliminarily approved the Settlement on August 24, 2022
8 (Dkt. 527), and the Settlement Administrator, BrownGreer PLC, sent notice to
9 Class Members. *See* BrownGreer’s Status Report Related to Notice (“BG Rpt.”), ¶
10 20.

11 The notice campaign was robust and specifically targeted to members of the
12 certified Class. As detailed in Plaintiff’s Interim Report on notice, Dkt. 532, and the
13 Final Status Report of BrownGreer, BrownGreer conducted the Settlement’s multi-
14 step process to determine potential notice recipients. BrownGreer cross-matched
15 notice recipients against DIRECTV’s customer database to remove DIRECTV
16 customers who are not Class Members. BG Rpt. ¶ 13. Finally, BrownGreer
17 disseminated notice to Class Members via both email and hard-copy U.S. mail. *Id.*
18 at ¶¶ 20-21. Based on BrownGreer’s review, there were approximately 4,851 valid
19 claims. *Id.* at ¶ 29. This represents 2.92% of the 166,257 unique cell phone numbers
20 that received notice. *Id.* at ¶ 40. This claims rate is well within the normal range for
21 TCPA settlements, particularly for a case like this addressing calls made between
22 2008 and 2015, making memories and records extremely stale. Based on these
23 figures, if the Court were to approve Plaintiff’s motion for an award of attorneys’
24 fees and reimbursement of litigation expenses, each Class Member who received a
25

26 ¹ The Settlement Agreement was attached to Plaintiff’s Motion for Preliminary
27 Approval. *See* Dkt. 516-2. Unless otherwise specified, capitalized terms herein refer
28 to and have the same meaning as in the Settlement.

² As part of the Settlement, the parties reached an individual resolution of Plaintiff
Carmen Montijo’s claims.

1 call from CMI or iQor would receive roughly \$1,833 per call and each Class
2 Member who received a call from AFNI or ERC would receive roughly \$916 per
3 call.

4 Moreover, reaction to the Settlement was extremely positive. No Class
5 Member objected to the Settlement, and only three Class Members opted-out. BG
6 Rpt. ¶ 45. This positive reaction is noteworthy because, due to the Settlement’s
7 robust notice plan and the publicity it generated,³ the notice plan reached Class
8 Members and hundreds of thousands of non-Class Members.

9 The Settlement is “fair, adequate, and reasonable” and an outstanding result
10 for the Class. Plaintiff respectfully requests that the Court grant her motion for final
11 approval of the Settlement.

12 **BACKGROUND**⁴

13 **I. Pleadings and Motion to Dismiss**

14 On May 9, 2012, former plaintiff Cheryl Swope brought a class action
15 against DIRECTV debt collector Credit Management, LP (“CMI”) in the Eastern
16 District of Missouri. *Swope v. Credit Mgmt., LP*, No. 4:12-cv-832 (E.D. Mo.). On
17 November 21, 2012, Plaintiff Jenny Brown joined that action as an additional
18 named plaintiff. Dkt. 48.

19 On February 19, 2013, Ms. Brown’s claims against CMI were severed from
20 the *Swope* action and transferred to this Court. Case No. 2:13-cv-1170 (C.D. Cal.);

21
22 ³ See CNET, *Today is the Last Chance to Claim Money from DIRECTV’s \$17*
23 *Million Robocall Settlement*, Dec. 19, 2022, [https://www.cnet.com/personal-](https://www.cnet.com/personal-finance/today-is-your-last-chance-to-claim-money-from-directvs-17-million-robocall-settlement/)
24 [finance/today-is-your-last-chance-to-claim-money-from-directvs-17-million-](https://www.cnet.com/personal-finance/today-is-your-last-chance-to-claim-money-from-directvs-17-million-robocall-settlement/)
25 [robocall-settlement/](https://www.cnet.com/personal-finance/today-is-your-last-chance-to-claim-money-from-directvs-17-million-robocall-settlement/) (last accessed Jan. 17, 2023); The U.S. Sun, *Final day to Claim*
26 *Between \$300 to \$600 from \$17 Million Pot – See if You’re Owed a Robocall*
27 *Settlement*, [https://www.the-sun.com/money/6950081/directv-claim-robocall-](https://www.the-sun.com/money/6950081/directv-claim-robocall-settlement/)
28 [settlement/](https://www.the-sun.com/money/6950081/directv-claim-robocall-settlement/) (last accessed Jan. 17, 2023); Wealthofgeeks.com, *How to Get Your*
Money from DIRECTV’s \$17 Million Lawsuit Settlement, Nov. 23, 2022
[https://www.cnet.com/personal-finance/today-is-your-last-chance-to-claim-money-](https://www.cnet.com/personal-finance/today-is-your-last-chance-to-claim-money-from-directvs-17-million-robocall-settlement/)
[from-directvs-17-million-robocall-settlement/](https://www.cnet.com/personal-finance/today-is-your-last-chance-to-claim-money-from-directvs-17-million-robocall-settlement/) (last accessed Jan. 17, 2023).

⁴ The full case background is detailed in the Declaration of Daniel M. Hutchinson (“Hutchinson Decl.”) submitted with Preliminary Approval. Dkt. 517, ¶¶ 23-120.

1 Dkt. 71. On October 1, 2013, Plaintiff filed a Fourth Amended Complaint adding
2 DIRECTV as a defendant that alleged that DIRECTV violated the TCPA by using
3 an artificial or prerecorded voice to call cell phones, without the prior express
4 consent of Plaintiff and the potential class members. Dkt. 122. On May 27, 2014,
5 the Court denied DIRECTV's motion to strike portions of Ms. Brown's complaint.
6 Dkt. 153.

7 **II. Plaintiff's Motion for Class Certification**

8 In late 2014, the Court granted DIRECTV's motion to stay the case pending
9 resolution of two petitions before the FCC. Dkt. 198. The case was stayed until
10 April 27, 2018. Dkt. 220. After the stay was lifted, Plaintiff promptly moved for
11 class certification, Dkt. 222, and on March 29, 2019, the Court certified a class
12 consisting of "[a]ll persons residing within the United States who, within four years
13 prior to and after the filing of this action, received a non-emergency telephone
14 call(s) from DIRECTV and/or its third-party debt collectors regarding a debt
15 originally owed to DIRECTV, to a cellular telephone through the use of an artificial
16 or prerecorded voice and who were never DIRECTV customers." Dkt. 275.

17 On August 5, 2019, the Court held that certain class members who had been
18 DIRECTV customers were obligated to arbitrate their TCPA claims against
19 Defendant: "(1) current DIRECTV customers, and (2) persons who were DIRECTV
20 customers on or after October 1, 2004." Dkt. 287. On December 18, 2019, the
21 Court entered a revised class definition: "All persons residing within the United
22 States who, within four years prior to and after the filing of this action, received a
23 non-emergency telephone call(s) from DIRECTV and/or its third-party debt
24 collectors regarding a debt allegedly owed to DIRECTV, to a cellular phone
25 through the use of an artificial or prerecorded voice, and who has not been a
26 DIRECTV customer at any time since October 1, 2004." Dkt. 300.

27 **III. Discovery**

28 Plaintiff's party and third party discovery efforts in this case were

1 extraordinary. Hutchinson Decl. ¶¶ 34-47, 53-87. Specifically: Plaintiff served
2 subpoenas on dozens of relevant debt collection agency, engaged in extensive meet
3 and confers with each, and obtained critical documents. *Id.* at ¶¶ 58-62, 64, 67, 83-
4 84. Plaintiff litigated third-party actions in Florida and North Carolina, engaged
5 with some debt collection agencies' former employees and bankruptcy counsel, and
6 contacted dozens of individuals to obtain relevant call data. *See, e.g., id.* at ¶ 84
7 (describing motions to compel); Dkt. 484 at 6-10 (detailing Plaintiff's efforts to
8 obtain DCI call data). Plaintiff obtained sworn declarations from many of
9 DIRECTV's debt collectors and a deposition of AFNI.⁵ Plaintiff obtained more
10 than 200,000 pages of discovery from DIRECTV, reviewed DIRECTV's RMS
11 customer database, and conferred extensively with DIRECTV about DIRECTV's
12 effort to obtain call data from its debt collection agencies. Hutchinson Decl. ¶¶ 55,
13 68, 87. Plaintiff also deposed two DIRECTV Rule 30(b)(6) witnesses and all
14 relevant DIRECTV current and former employees. *Id.* at ¶ 82. Plaintiff submitted
15 two affirmative expert reports and rebutted DIRECTV's expert. *Id.* at ¶¶ 78-80.
16 Each expert was deposed. *Id.* at ¶ 81. Finally, Plaintiff obtained relevant
17 information from public records requests to federal and state agencies. *Id.* at ¶ 86.

18 **IV. Summary Judgment and Decertification Motions**

19 On August 27, 2021, Plaintiff moved for summary judgment on certain calls
20 made by CMI and iQor. Dkt. 364. DIRECTV moved for summary judgment and to
21 decertify the class. Dkts. 373 & 377. On December 1, 2021, the Court issued an
22 omnibus order that: (1) denied Defendant's motion for decertification of the class;
23 (2) granted Defendant's summary judgment motion as to claims based on (i) calls
24 prior to August 14, 2009; (ii) third-party collections calls after December 4, 2015;
25 (iii) calls made by ERC prior to August 6, 2014, by Convergent from October 26,
26 2008 to May 10, 2016 and November 11, 2016 to February 25, 2019, and by NCO

27 _____
28 ⁵ *See* Dkts. 365-14 (iQor); 365-16 (CMI); 365-17 (Alorica); 365-18 (CBE); 365-19
(ERC); 365-20 (DCI); Dkt. 373-3 (AFNI deposition).

1 Financial Systems from January 16, 2009 to August 31, 2016; (3) granted
2 Plaintiff's summary judgment motion as to calls made by iQor and/or CMI from
3 August 14, 2009 to December 4, 2015; and (4) denied as moot Plaintiff's motion to
4 exclude Defendant's expert report. Dkt. 401. The Court further found that it would
5 enter judgment with regard claims based on iQor and CMI calls following the
6 completion of a claims administration process. *Id.*

7 Because DIRECTV operated under identical contracts with its third-party
8 debt collection agencies, after obtaining leave of court, Plaintiff moved again for
9 summary judgment for certain calls made by AFNI, ERC, and DCI. Dkt. 414. On
10 March 31, 2022, the Court granted Plaintiff's motion in part. It held that: (1) calls
11 made by AFNI and ERC violated the TCPA, but denied Plaintiffs' motion as to
12 vicarious liability for AFNI and ERC and (2) DCI was DIRECTV's agent, but
13 Plaintiff had not proven her TCPA claims against DIRECTV. Dkt. 436.

14 **V. Trial Preparation**

15 The Court set a trial date of June 14, 2022, to determine, *inter alia*,
16 DIRECTV's vicarious liability for calls placed by AFNI and ERC, DIRECTV's
17 liability for DCI calls, and the Class's eligibility for treble damages. Dkt. 437.
18 Under this two-month timeline, the parties immediately began filing pre-trial
19 motions, disputed jury instructions, exhibit lists, motions in limine (four from
20 DIRECTV and three from Plaintiff), *Daubert* motions, and preparing for a pre-trial
21 conference. Dkts. 441-45, 448-78, 481-98. On May 14, 2022, the Court held its
22 Final Pretrial Conference. Dkt. 502.

23 On May 19, 2022, the Court entered another omnibus order. Dkt. 503. It
24 amended the class definition to “[a]ll persons residing within the United States
25 who, within four years prior to and after the filing of this action, received a non-
26 emergency telephone call(s) from DIRECTV and/or iQor, Inc., Credit Management,
27 LP, AFNI, Inc, or Enhanced Recovery Company, Inc. regarding a debt allegedly
28 owed to DIRECTV, to a cellular telephone through the use of an artificial or

1 prerecorded voice, and who not been a DIRECTV customer at any time since
2 October 1, 2004.” *Id.* By virtue of this order, named plaintiff Carmen Montijo was
3 no longer a class member, but was able to pursue individual claims. *Id.* at 9, n.16.

4 Trial on DIRECTV’s liability for calls made by AFNI and ERC and
5 willfulness for AFNI, ERC, CMI, and iQor’s calls was scheduled for June 14, 2022.

6 **VI. Settlement Negotiations**

7 The parties conducted numerous arm’s-length mediations with the assistance
8 of experienced professional mediators. They first mediated with Hon. Irma E.
9 Gonzalez (Ret.) on September 23, 2015, at JAMS Los Angeles. Hutchinson Decl.
10 ¶¶ 46, 95. Next, the parties mediated after the Court’s first summary judgment order
11 with Hon. Morton Denlow (ret.) on December 6, 2021, but again did not reach
12 resolution. *Id.* at ¶ 98. The parties mediated with Robert A. Meyer at JAMS Los
13 Angeles on Saturday May 14, 2022, three days before the final pre-trial conference,
14 and *again* did not reach agreement. *Id.* at ¶¶ 100, 105. However, Mr. Meyer
15 engaged both parties in post-mediation settlement discussions, and the parties
16 reached a settlement in principle late in the evening Friday of Memorial Day
17 Weekend, May 27, 2022. *Id.* at ¶¶ 111-12.

18 **THE SETTLEMENT TERMS**

19 **I. The Class Definition**

20 The “Class” or “Settlement Class” means: “All persons residing within the
21 United States who, within four years prior to and after the filing of this action,
22 received a non-emergency telephone call(s) from DIRECTV and/or iQor, Inc.,
23 Credit Management, LP, AFNI, Inc, or Enhanced Recovery Company, Inc.
24 regarding a debt allegedly owed to DIRECTV, to a cellular telephone through the
25 use of an artificial or prerecorded voice, and who has not been a DIRECTV
26 customer at any time since October 1, 2004. The Settlement Class encompasses
27 only persons identified by the telephone numbers and calls during the Settlement
28 Class Period in Plaintiff’s summary judgment motions. *See* Dkts. 375-1 (CMI),

1 375-2 (iQor), 415-6 (AFNI), and 415-7 (ERC).” Agr. § 2.27.⁶

2 **II. Monetary Settlement Payment**

3 The Settlement requires DIRECTV to pay an all-cash sum of \$17,000,000.
4 *Id.* § 4.01. Out of this Fund, Class Members who filed a valid claim will receive a
5 Settlement Award. *Id.* § 5.02. The amount of each Class Member’s Award will be
6 based on a *pro rata* distribution, depending on the number of valid and timely
7 claims. *Id.* § 4.04. Class Members who received calls from iQor and CMI (for
8 which summary judgment was granted) get two shares of the *pro rata* distribution.
9 *Id.* §§ 2.06, 5.04. Class Members who received calls from AFNI and ERC (for
10 which trial would have been held on vicarious liability) get one share of the *pro*
11 *rata* distribution. *Id.* §§ 2.06, 5.04. *Id.* §§ 2.06, 5.04. The Court previously held that
12 this is “substantively fair and treats the Settlement Class Members equitably
13 relative to each other.” Dkt. 527, at ¶ 7. The Fund also covers (i) all fees and costs
14 incurred by the Claims Administrator; (ii) Class Counsel/Additional Counsel’s
15 Court-approved attorneys’ fees and reimbursement of reasonable costs; and (iii) any
16 Court-approved service awards paid to Plaintiff. *Id.* §§ 2.33, 2.34, 5.01-5.04.

17 **III. Scope of Release**

18 The scope of the Settlement Class Members’ release is consistent with the
19 allegations in the Complaint. *See* Agr. § 14.01.

20 **IV. Payment of Notice and Administration Costs**

21 The Settlement provides that all reasonable costs and expenses associated
22 with giving notice to the Class Members and for administration of the Settlement
23 shall be deducted from the Settlement Fund prior to paying any settlement checks
24 to Settlement Class Members. *Id.* §§ 4.03, 5.03(c).

25
26
27 ⁶ Excluded are: (a) those persons who previously opted out in response to the notice
28 of class certification, identified in Dkt. 420-1, (b) any trial judge that may preside
over this case, (c) Defendant as well as any parent, subsidiary, affiliate or control
person of Defendant.

1 **V. Remaining Funds and Redistribution**

2 If any checks remain uncashed more than 180 days after the date on the
3 check, the amounts of such checks will be redistributed on a *pro rata* basis to the
4 eligible Settlement Class Members if, after administration, the redistribution is
5 economically feasible (*i.e.*, all Settlement Class Members who have made a valid
6 and timely claim equal to or greater than \$1.00 per qualifying claimant). Agr. §
7 10.06(a). If redistribution is not economically feasible, Plaintiff will apply to the
8 Court for approval of distribution to one or more non-profit recipients. *Id.*

9 **SETTLEMENT ADMINISTRATION**

10 **I. Notice to the Class**

11 As previously detailed, *see* Dkt. 532, BrownGreer followed the Court-
12 approved notice plan to disseminate notice via U.S. mail and email to potential
13 Class Members. *See also* BG Rpt. ¶¶ 20-21. On September 19, 2022—after
14 determining cell phone ownership using verified historical phone records from
15 AT&T, Verizon, and T-Mobile obtained via Plaintiff’s subpoenas; using owner
16 identification searches through LexisNexis and Thomson Reuters commercial
17 compendiums; and removing DIRECTV customers—BrownGreer successfully
18 identified 228,365 owners of 191,359 unique cell phones. *Id.* at ¶ 15. This number
19 represents only Class Members. It is the total remaining from the 220,510 unique
20 cell phone numbers included in Plaintiff’s summary judgment motions, after
21 eliminating DIRECTV customers who are not Class Members.

22 BrownGreer operated the Settlement Website, dtvprerecordclassaction.com,
23 which contained the Class Notice, the Settlement Agreement, other key case
24 documents, and processed online submission of Claim Forms.⁷ BG Rpt. ¶ 24; Agr.
25 at § 9.04. BrownGreer established a toll-free number for class members to make
26 inquiries regarding the settlement. In total, the Settlement Website received 280,836
27 unique site visits and the toll-free number received 807 calls. BG Rpt. ¶ 26.

28 _____
⁷ This same URL was used when disseminating class notice.

1 **II. Claims, Objections, and Opt-Outs**

2 The Court-approved claim form was mailed or emailed successfully to
3 owners of 166,257 unique cell phones. *See* Dkt. 516-2, Ex. A; BG Rpt. ¶ 23. Notice
4 recipients had until December 19, 2022 to submit a timely claim. *Id.* at ¶ 27.
5 BrownGreer received a total of approximately 178,215 claims. *Id.* Because the
6 notice plan generated so much publicity, a large number of non-Class Members
7 filed claims. These non-Class Members likely include persons who received calls
8 from other debt collectors, DIRECTV customers, and persons simply hoping to
9 receive payment even though they did not meet the Class definition. BrownGreer
10 rejected 173,364 claims from non-Class Members because they did not meet the
11 criteria for valid claims. *Id.* at ¶ 30.⁸ In so doing, BrownGreer used the criteria for
12 Class Membership set forth in the Settlement Agreement and objective metrics to
13 compare the submitted claims to its Class Member information using confidence
14 intervals. *Id.* at ¶ 28.

15 2,333 claims were 100% matches and thus automatically deemed valid
16 claims. *Id.* at ¶ 31. Another 2,518 claims had higher than an 80% confidence
17 interval or were deemed by BrownGreer to likely be claims based on its manual
18 review. *Id.* at ¶ 34. On December 20, 2022, BrownGreer sent a follow up email or
19 hard copy mail to these 2,518 individuals telling them to inform BrownGreer within
20 35 days (January 24, 2023) whether they were not Class Members, otherwise they
21 would be entitled to payment.⁹

22 Moreover, on December 20, 2022, pursuant to the Settlement Agreement's
23 provision permitting claimants to cure invalid claims, Agmt. § 10.02(c),
24 BrownGreer emailed invalid claimants to give them the opportunity to provide any

25 _____
26 ⁸ BrownGreer determined that a majority of online claims were sourced from class
27 action aggregation and promotion websites such as Topclassactions.com. Moreover,
28 there were multiple articles about the Settlement and how to make a claim. *Id.* at ¶
36.

⁹ BrownGreer intends to file a supplemental report, which will include an update if
it determines that any of these 2,518 individuals are not entitled to payment.

1 evidence of a valid claim. BG Rpt. ¶ 35. Individuals who can provide the Notice ID
2 provided in the settlement class notice and the other information required for class
3 membership will be deemed Class Members. *Id.* These individuals have 35 days to
4 cure their invalid claims, giving them until January 24, 2023. Agmt. § 10.02(c).
5 BrownGreer will provide an update in its supplemental report in advance of the
6 February 24, 2023 final approval hearing.

7 Thus, there are presently 4,851 valid claims. Of these, 2,541 were called by
8 CMI or iQor, and 2,310 were called by ERC or AFNI. BG Rpt., ¶ 29. This
9 represents a claims rate of 2.92% (4,851/166,257).¹⁰ If the Court grants Plaintiff's
10 motion for attorneys' fees and expenses, each CMI/iQor class recipient would
11 receive approximately \$1,832.77 and each AFNI/ERC class recipient would receive
12 \$916.38.¹¹ BG Rpt., ¶ 43.

13 No one objected to the Settlement and there were three opt-outs. *Id.* ¶¶ 44-
14 46.¹²

18 ¹⁰ Using the alternate formulas that Plaintiff provided in her interim notice report
19 (*see* Dkt. 532, ¶¶ 18-19), the claims rate is 2.77% (4,851 claims out of 174,827
20 unique cell phone numbers with name and address identified); 2.54% (4,851 claims
21 out of 191,359 total unique numbers whose owners were identified and were not
22 DIRECTV customers); 2.20% (4,851 claims out of 220,510 unique cell phone
23 numbers prior to DIRECTV customers being removed); 2.28% (4,851 claims out of
24 212,808 total individuals who received class notice); 2.12% (4,851 claims out of
25 228,365 total individuals with a mailing address or email identified); 1.88% (4,851
26 claims out of 258,284 individuals identified prior to DIRECTV customers being
27 removed). BG Rpt. ¶¶ 40-41.

28 ¹¹ Assuming no additional valid claims, there are a total of 10,740 pro-rata shares
(2,662 AFNI/ERC and 8,078 iQor/CMI). If the Court grants Plaintiff's motion for
fees and expenses, then the \$17 million Fund would be reduced by \$5,666,666.66
(attorney's fees) + \$869,303.55 (expenses) + \$10,000 (Ms. Brown's service award),
+ \$612,077 (BrownGreer's estimated administration costs) for a total remainder of
\$9,841,952.79. This figure divided by 10,740 pro-rata shares is \$916.38 per pro-
rata share. BG Rpt. ¶ 43.

¹² This is in addition to those individuals who opted-out of the class after receiving
notice at the time of class certification. Dkt. 420-1.

ARGUMENT

I. The Settlement Satisfies All Requirements for Final Approval.

The Court must grant final approval of any class action settlement before it can be effectuated. FED. R. CIV. P. 23(e). “Rule 23(e) imposes on district courts an independent obligation to ensure that any class settlement is ‘fair, reasonable, and adequate,’ accounting for the interests of absent class members.” *Briseño v. Henderson*, 998 F.3d 1014, 1022 (9th Cir. 2021). Under the amended Federal Rule of Civil Procedure 23(e)(2), courts should consider whether: (1) “the class representatives and class counsel have adequately represented the class”; (2) “the proposal was negotiated at arm’s length”; (3) “the relief provided for the class is adequate”; and (4) the proposal treats class members equitably relative to one another.”¹³ Those factors are satisfied here.

A. The Rule 23(e)(2) Factors Are Satisfied.

1. Rule 23(e)(2)(A): Class Counsel and Ms. Brown Vigorously Represented the Class.

The Court must consider whether “the class representatives and class counsel have adequately represented the class.” FED. R. CIV. P. 23(e)(2)(A). This analysis considers “the nature and amount of discovery in this case or other cases, or the actual outcomes of other cases, which may indicate whether counsel negotiating on behalf of the class had an adequate information base.” *Conti v. Am. Honda Motor Co.*, 2022 U.S. Dist. LEXIS 1561, *24 (C.D. Cal. Jan. 4, 2022) (quotation marks

¹³ Rule 23(e) substantively tracks the Ninth Circuit test for evaluating a settlement’s fairness. *See Loomis v. Slendertone Distrib., Inc.*, 2021 WL 873340, at *4, n.4 (S.D. Cal. Mar. 9, 2021) (folding Ninth Circuit analysis into Rule 23(e) analysis). Plaintiff’s analysis accounts for the Ninth Circuit’s factors and discusses them where applicable. Those factors are: “[1] the strength of the plaintiffs’ case; [2] the risk, expense, complexity, and likely duration of further litigation; [3] the risk of maintaining class action status throughout the trial; [4] the amount offered in settlement; [5] the extent of discovery completed and the stage of the proceedings; [6] the experience and views of counsel; [7] the presence of a governmental participant; and [8] the reaction of the class members to the proposed settlement.” *Campbell v. Facebook, Inc.*, 951 F.3d 1106, 1121 (9th Cir. 2020) (citation omitted).

1 omitted) (quoting FED. R. CIV. P. 23, 2018 adv. comm. note). This analysis is
2 “redundant of the requirements of Rule 23(a)(4) and Rule 23(g),” *Hudson v. Libre*
3 *Tech. Inc.*, 2020 WL 2467060, at *5 (S.D. Cal. May 13, 2020) (citations omitted),
4 which the Court previously found when it appointed Ms. Brown as the class
5 representative and her counsel as Class Counsel. Dkt. 275 at 9.

6 These findings remain true. As detailed above, Class Counsel and Ms. Brown
7 litigated this matter fully through fact and expert discovery and through a contested
8 (and successful) class certification motion, a motion to decertify, arbitration-related
9 motions, two summary judgment motions, motions *in limine*, and up until the brink
10 of trial. *See Valenzuela v. Walt Disney Parks & Resorts U.S., Inc.*, 2019 WL
11 8647819, at *6 (C.D. Cal. Nov. 4, 2019); *Hefler v. Wells Fargo & Co.*, 2018 WL
12 6619983, at *6 (N.D. Cal. Dec. 18, 2018) (class counsel “vigorously prosecuted this
13 action through dispositive motion practice, extensive initial discovery, and formal
14 mediation”).¹⁴

15 Likewise, Ms. Brown diligently served as a class representative throughout
16 the nearly ten-year course of this case, including in providing discovery, sitting for
17 a deposition, and preparing to be a trial witness. *See* Dkt. 521. Accordingly, the
18 Settlement satisfies Rule 23(e)(2)(A).

19 **2. Rule 23(e)(2)(B): The Settlement Resulted from Informed**
20 **Arm’s-Length Negotiations.**

21 Under Rule 23(e)(2)(B), the Court considers whether the settlement “was
22 negotiated at arm’s length.” FED. R. CIV. P. 23(e)(2)(B). Although this factor does
23 not create a presumption of fairness, *see Saucillo v. Peck*, 25 F.4th 1118, 1132 (9th
24

25 ¹⁴ *Accord Campbell*, 951 F.3d at 1121; *Cottle v. Plaid, Inc.*, 340 F.R.D. 356, 375
26 (N.D. Cal. 2021) (under the fifth Ninth Circuit factor, courts consider the stage of
27 the proceedings and ask whether the settlement was reached “following sufficient
28 discovery and genuine arms-length negotiation,” which “suggests that the parties
arrived at a compromise based on a full understanding of the legal and factual
issues surrounding the case.”) (quoting *Nat’l Rural Telecomms. Coop. v. DirecTV,*
Inc., 221 F.R.D. 523, 527-28 (C.D. Cal. 2004)).

1 Cir. 2022), “such negotiations can weigh in favor of approval,” *Community Res.*
2 *For Indep. Living v. Mobility Works of Cal.*, 533 F. Supp. 3d 881, 888 (N.D. Cal.
3 2020); *see also Rodriguez v. W. Publishing Corp.*, 563 F.3d 948, 965 (9th Cir.
4 2009) (“We put a good deal of stock in the product of an arms-length, non-
5 collusive, negotiated resolution.”).

6 Here, the parties engaged in vigorous and contested settlement negotiations
7 with the aid of three mediators before ultimately mediating successfully with Robert
8 Meyer of JAMS. *See Agr.* ¶ 1.15; Hutchinson Decl. ¶¶ 46, 98, 100, 105, 111-12.
9 This strongly indicates that there was no collusion. *See Conti*, 2022 U.S. Dist.
10 LEXIS 1561 at *26 (presence of a mediator suggests negotiations “were conducted
11 in a manner that would protect and further the class interests”); *Spencer-Ruper v.*
12 *Scientiae, LLC*, 2021 WL 4895740, at *1 (C.D. Cal. Sept. 24, 2021) (weighing fact
13 that “an experienced mediator agreed with the parties”). With Mr. Meyer’s
14 assistance, the parties “did not negotiate attorneys’ fees, costs, or Plaintiff’s
15 incentive award until after agreeing to these and other principal terms.” Dkt. 520, ¶
16 5 (Decl. of Robert Meyer).

17 Nor does the Settlement contain any signs of collusion. *See generally In re*
18 *Bluetooth Headset Products Liab. Litig.*, 654 F.3d 935, 947 (9th Cir. 2011). Here,
19 Class Counsel requested an award of one-third of the Settlement Fund plus
20 reimbursement of costs, which is less than their lodestar. *See Agr.* §§ 6.02; *see also*
21 Dkt. 528 (fee brief). The Class as a whole will receive the bulk of the settlement
22 fund, and each individual Class Member who makes a claim will get a significant
23 award—\$1,832.77 per call for Class Members who received calls from CMI/iQor
24 and \$916.38 per call for Class Members who received calls from AFNI/ERC.
25 Indeed, the estimated award is equal to or exceeds payments in other TCPA
26 settlements approved in California and across the country.¹⁵ Finally, no amount of
27

28 ¹⁵ *See, e.g., Steinfeld v. Discover Fin. Servs.*, No. C 12-01118, Dkt. 96, ¶ 6 (N.D. Cal. Mar. 10, 2014) (claimants received \$46.98); *Adams v. AllianceOne*

1 the settlement fund will revert to DIRECTV if the Settlement is approved. *See* Agr.
2 § 4.04.

3 In summary, this was a hard-fought, contested case from the start, one that
4 was only resolved with the aid of a skilled mediator, and with no indicia of
5 collusion. This factor supports final approval.

6 **3. Rule 23(e)(2)(C): The Relief Provided by the Settlement Is**
7 **Outstanding.**

8 Rule 23(e)(2)(C) requires courts to consider whether “the relief provided for
9 the class is adequate, taking into account: (i) the costs, risks, and delay of trial and
10 appeal; (ii) the effectiveness of any proposed method of distributing relief to the
11 class, including the method of processing class-member claims; (iii) the terms of
12 any proposed award of attorney’s fees, including timing of payment; and (iv) any
13 agreement required to be identified under Rule 23(e)(3).” FED. R. CIV. P.
14 23(e)(2)(C). All of those factors overwhelmingly support approval in this case.

15 *a. Rule 23(e)(2)(C)(i): The Relief Provided for the Class Is*
16 *Substantial, Particularly in Light of the Costs, Risks, and*
17 *Delay of Trial and Appeal.*

18 Rule 23(e)(2)(C)(i) requires the Court to “evaluate the adequacy of the
19 settlement in light of the case’s risks.” *In re Wells Fargo & Co. S’holder Derivative*

20
21 *Receivables Mgmt., Inc.*, No. 3:08-cv-00248-JAH-WVG, Dkt. 137 (S.D. Cal. Sept.
22 28, 2012) (claimants received \$40); *Kramer v. Autobyte, Inc., et al.*, No. 10-cv-
23 2722, Dkt. 148 (N.D. Cal. 2012) (cash payment of \$100 to each class member);
24 *Estrada v. iYogi, Inc.*, 2015 WL 5895942, at *7 (E.D. Cal. Oct. 6, 2015)
25 (preliminarily approving TCPA settlement where class members estimated to
26 receive \$40); *Rose v. Bank of Am. Corp.*, 2014 WL 4273358, at *10 (N.D. Cal.
27 Aug. 29, 2014) (claimants estimated to receive \$20 to \$40); *In re Capital One Tel.*
28 *Consumer Prot. Act Litig. (In re Capital One)*, 80 F. Supp. 3d 781, 787 (N.D. Ill.
2015) (each claimant received \$34.60); *Arthur v. Sallie Mae, Inc.*, 10-cv-0198-JLR
(W.D. Wash.) (class members were to receive between \$20 and \$40 per claim);
Fox v. Asset Acceptance, LLC, No. 2:14-cv-00734-GW-FFM (C.D. Cal. June 20,
2016) (estimating recovery between \$11.79 and \$28.22 per person at time of
fairness hearing, from the cash component of the settlement); *Sherman v. Kaiser*
Found. Health Plan, Inc., 13-cv-00981-JAH-JMS (S.D. Cal.) (\$39.68 per claimant).

1 *Litig.*, 2019 WL 13020734, at *5 (N.D. Cal. May 14, 2019).¹⁶ This requires
2 weighing “the relief that the settlement is expected to provide” against “the strength
3 of the plaintiffs’ case [and] the risk, expense, complexity, and likely duration of
4 further litigation.” *Id.* (cleaned up).¹⁷

5 Here, \$17 million represents a significant portion of each Class Members’
6 TCPA statutory damages. It reflects the strength of Plaintiff’s case where she won
7 summary judgment on behalf of CMI and iQor class members as to her *prima facie*
8 case *and* vicarious liability, which appears to be a first in this circuit. *See Brown v.*
9 *DIRECTV, LLC*, 562 F. Supp. 3d 590 (C.D. Cal. 2021). Plaintiff also fended off a
10 motion to decertify the class, *see id.*, and won partial summary as to calls made by
11 AFNI and ERC, leaving only vicarious liability as to those vendors for trial. *See*
12 *Dkt. 436.*

13 In light of the myriad challenges and delay the Class would have faced at
14 trial, the claims administration process, and through appeal, the Settlement
15 represents an exceptional result for the Class. As the Court noted during the
16 preliminary approval hearing, “while plaintiffs’ case were strong, many of the
17 easier issues for plaintiff were already resolved with only her most difficult claims
18 left for trial. Trial would have been complex and expensive with a substantial risk
19 that plaintiff would not prevail.” Aug. 19, 2022 Hr’g Tr. at 26:22-27:1.

20 Further litigation would have involved substantial risk and considerable
21 delay. Plaintiff would not only have had to prevail at trial, but also retain any
22 favorable judgment on appeal. Litigating this case to trial and through any appeals
23 would have been expensive and time-consuming.

24 _____
25 ¹⁶ *Accord Campbell*, 951 F.3d at 1121; *Cottle*, 340 F.R.D. at 374 (“The fourth
[Ninth Circuit] factor looks at the amount of recovery offered in settlement.”)

26 ¹⁷ *Accord Campbell* 951 F.3d at 1121; *Cottle*, 340 F.R.D. at 373 (“The first three
27 [Ninth Circuit] factors are addressed together and require the court to assess the
28 plaintiff’s ‘likelihood of success on the merits and the range of possible recovery’
versus the risks of continued litigation and maintaining class action status through
the duration of the trial.”) (quoting *Garner v. State Farm Mut. Auto Ins. Co.*, 2010
WL 1687832, at *9 (N.D. Cal. Apr. 22, 2010)).

1 Even if Plaintiff prevailed on appeal, a contested post-judgment distribution
2 process would likely have been costly and time-consuming—and, most
3 importantly, would have almost certainly resulted in less money for Class
4 Members. In *Krakauer v. Dish Network, LLC*, for example, the court entered an
5 order regarding post-trial procedures on July 27, 2017, but took nearly four years to
6 begin *cy pres* distributions. Compare *Krakauer*, 2017 WL 3206324 (M.D.N.C. July
7 27, 2017) with 2021 WL 1699945 (M.D.N.C. Apr. 29, 2021). The Settlement, by
8 contrast, provides the Class with immediate relief. See *Nat’l Rural Telecomms.*
9 *Coop. v.* , 221 F.R.D. at 526 (“The Court shall consider the vagaries of litigation
10 and compare the significance of immediate recovery by way of the compromise to
11 the mere possibility of relief in the future, after protracted and expensive
12 litigation.”).¹⁸

13 Moreover, this Court repeatedly held that it would require a post-judgment
14 claims administration process to ensure that only Class Members received payment.
15 See, e.g., Dkt. 503 at 13-14. While the parameters of that process were subject to
16 further briefing, it most certainly would have required each claimant to be a Class
17 Member. Here, after a robust process, approximately 4,851 Class Members
18 submitted claims. At \$500 per call, those Class Members would have received a
19 total of \$2,425,500, or \$7,276,500 if the Court found willfulness and trebled these
20 statutory damages. By that measure, the \$17 million obtained through settlement is
21 drastically better than those same Class Members could have received through
22 litigation.

23 Indeed, the Ninth Circuit’s recent decision vacating a statutory damages
24

25 ¹⁸ In addition, Plaintiff faced external risks emanating from the TCPA’s ever-
26 changing legal landscape. The Court previously stayed this action pending FCC
27 rulemaking that could have eviscerated Plaintiff’s claims. During the pendency of
28 this case, the Supreme Court considered the TCPA’s constitutionality as a whole.
See Barr v. Am. Ass’n of Political Consultants, Inc., 140 S. Ct. 2335 (2020). And if
the Supreme Court had found that the TCPA was unconstitutional, Plaintiff’s
claims would have suddenly ceased to exist—extinguishing any hope of a recovery.

1 award on due process grounds in a similar TCPA class action further underscores
2 the post-trial risks Plaintiff and Class Members faced here. *See Wakefield v.*
3 *Visalus, Inc.*, 51 F.4th 1109 (9th Cir. 2022). *Wakefield* involved a trial verdict of
4 over \$925 million in statutory TCPA damages. The Ninth Circuit reversed, holding
5 that the trial court must consider the total award in light of the standard articulated
6 in *St. Louis, I. M. & S. Ry. Co. v. Williams*, 251 U.S. 63 (1919), which “declared
7 that damages awarded pursuant to a statute violate due process only if the award is
8 ‘so severe and oppressive as to be wholly disproportioned to the offense and
9 obviously unreasonable.’” *Wakefield*, 51 F.4th at 1120 (quoting *Williams*, 251 U.S.
10 63, 67 (1919)); *see also id.* at 1121 (citing *United States v. Citrin*, 972 F.2d 1044,
11 1051 (9th Cir. 1992)). *Wakefield* vacated the damages award and remanded for
12 consideration of whether the aggregate award violated due process. *Id.* at 1125.

13 Thus, under *Wakefield*, even if Plaintiff and the Class won at trial and
14 obtained the full amount available in statutory damages, the award would have been
15 subject to reduction if it violated due process in the aggregate. The \$17 million
16 settlement is reasonable in light of the risks, costs, and delay of further litigation
17 and appeal. Ultimately, the Settlement provides immediate and guaranteed relief to
18 Class Members. This fact counsels in favor of settlement.

19 *b. Rule 23(e)(2)(C): The Settlement Claims Process Was*
20 *Effective.*

21 Rule 23(e)(2)(C)(ii) asks whether the methods for claims processing and
22 distribution are effective. Class Members received direct notice of the Settlement
23 claims process and benefits through the Court-approved notice program. BG Rpt. ¶
24 23. The Settlement claims process provided a simple method for potential class
25 members to submit claims for the Settlement Administrator’s review. This
26 simplicity was critical given the length of time between individuals receiving the at-
27 issue calls and getting notice. In order to ensure that only Class Members will
28 receive compensation—and that legitimate claims are honored—individuals

1 submitting deficient claims were given a chance to correct their claims. BG Rpt. ¶¶
2 35-36; Agmt. § 10.02(c). This process was designed to provide the minimum
3 possible obstacles to Class Members making claims, while still ensuring that
4 recovery is limited to Class Members only.

5 The Settlement’s distribution plan is also simple, straightforward, and
6 equitable. Settlement Class Members will receive *pro rata* shares from the
7 remaining Net Settlement Fund, with those who received calls from CMI and iQor
8 receive two *pro rata* shares per call. Agr. § 5.04. As the Court noted during the
9 preliminary approval hearing, this difference “reasonably reflects the remaining
10 risks of each class member’s case.” Aug. 19, 2022 Hr’g Tr. at 28:14-15.
11 BrownGreer will submit a supplemental report in advance of the February 24, 2023
12 final approval hearing, which will include an update if the number of valid claims
13 changes.

14 c. *Rule 23(e)(2)(C)(iii): The Terms of the Proposed Award*
15 *of Attorney’s Fees Put Class Members First.*

16 Under Rule 23(e)(2)(C)(iii), the Court must evaluate Class Counsel’s
17 “proposed award of attorney’s fees, including timing of payment.” FED. R. CIV. P.
18 23(e)(2)(C)(iii). Plaintiff separately filed a motion in support of her requested fees
19 and costs. Dkt. 528. As set forth in that motion, the requested amount is reasonable
20 and represents a *negative* multiplier on Class Counsel’s lodestar. The fee request is
21 independent of this final approval motion, and payment to Class Counsel will be
22 made only once there is a grant of final settlement approval. *See Tarlecki v. Bebe*
23 *Stores, Inc.*, 2009 WL 3720872, at *2 (N.D. Cal. Nov. 3, 2009) (citing *Staton v.*
24 *Boeing Co.*, 327 F.3d 938, 972 (9th Cir. 2003)) (“In common fund settlements
25 where the fees are deducted from the common fund, the approval of the settlement
26 agreement as a whole does not depend on the quantum of the fees.”)).
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d. *Rule 23(e)(2)(C)(iv): There Are no Undisclosed Side Agreements.*

Under Rule 23(e)(C)(iv), the Court must consider any agreements identified under Rule 23(e)(3) which requires the parties seeking approval to “file a statement identifying any agreement in connection with the proposal.” As disclosed in the Settlement, the parties also settled the claims of former plaintiff Carmen Montijo, who received calls from DCI. Agr. § 6.05. The Court previously decertified DCI calls, while preserving Ms. Montijo’s individual claims. *See* Dkt. 503 at 9. Ms. Montijo’s \$5,000 settlement was not deducted from the Settlement Fund, nor was the agreement contingent on the resolution of Ms. Montijo’s claims. Agr. § 6.05. Rather, this agreement simply reflects the parties’ efforts to resolve this action in its entirety. *Id.* Courts have recognized that such agreements are acceptable. *See Perks v. ActiveHours, Inc.*, 2021 U.S. Dist. LEXIS 57272, *17 (N.D. Cal. Mar. 25, 2021) (“Named Plaintiffs disclosed in their motion for preliminary approval that a separate plaintiff agreed to voluntarily dismiss his individual claims. This has no effect on the Settlement Class and does not diminish the relief provided for them.”).

4. Rule 23(e)(2)(D): The Settlement Treats Class Members Equitably Relative to Each Other.

Rule 23(e)(2)(D) requires the Court to consider whether the “proposal treats class members equitably relative to each other.” FED. R. CIV. P. 23(e)(2)(D). Courts seek “to ensure that similarly situated class members are treated similarly and that dissimilarly situated class members are not arbitrarily treated as if they were similarly situated,” *Mandalevy v. Bofi Holding, Inc.*, 2022 WL 1556160, at *9 (S.D. Cal. May 17, 2022) (quoting 4 William Rubenstein, *Newberg on Class Actions* § 13:56 (5th ed. 2020)). “Matters of concern could include whether the apportionment of relief among class members takes appropriate account of differences among their claims, and whether the scope of the release may affect class members in different ways that bear on the apportionment of relief.” FED. R. CIV. P. 23, 2018 adv. comm.

1 note.

2 Here, the Settlement recognizes that Class Members called by CMI or iQor
3 have stronger claims because the Court granted a liability judgment in their favor,
4 Dkt. 401, and thus the Settlement affords them double the rate of recovery. Agr. §
5 5.04; Aug. 19, 2022 Hr’g Tr. at 28:6-15 (distribution “reasonably reflects the
6 remaining risks of each class member’s case”). This is precisely the type of
7 difference that settlements must take into account. *See Loreto v. Gen. Dynamics*
8 *Info. Tech., Inc.*, 2021WL 3141208, at *8-11 (S.D. Cal. July 26, 2021) (approving
9 settlement that treated class members differently based on genuine differences
10 between the strength of their claims).

11 In addition, Plaintiff requested a service award of \$10,000. Agr. § 6.03. This
12 seeks to compensate her for her time and effort in pursuing this matter on behalf of
13 the Class, including participating in discovery, sitting for a deposition, and
14 preparing to be a trial witness. Dkt. 521 (Brown Decl.). “Class representative
15 service awards are well-established as legitimate in the Ninth Circuit.” *Ramirez v.*
16 *Rite Aid Corp.*, 2022 U.S. Dist. LEXIS 109069, at *21 (C.D. Cal. May 3, 2022). In
17 addition, a service award of \$10,000 is reasonable and in line with awards approved
18 by federal courts in this circuit. *See, e.g., In re Nat’l Collegiate Athletic Ass’n*, 2017
19 WL 6040065, at *11 (N.D. Cal. Dec. 6, 2017) (awarding \$20,000 incentive awards
20 to each class representative and collecting cases approving similar awards);
21 *Horton v. Cavalry Portfolio Servs., LLC*, 2020 WL 13327499, at *1 (S.D. Cal. Oct.
22 13, 2020) (\$10,000 incentive award); *Larson v. Harman-Mgmt. Corp.*, 2020 WL
23 3402406, at *10 (E.D. Cal. June 19, 2020) (same).

24 **B. The Court Should Amend the Class Definition for Purposes of**
25 **Settlement.**

26 A class has already been certified. *See* Dkts. 275 (certifying the class), 300
27 (joint class definition); 503 (amending class definition). The Settlement seeks to
28 settle the claims of the class as currently defined in the Court’s most recent order.

1 Dkt. 503. The Parties propose to add a qualification so that the Settlement Class
2 consists only of those individuals “associated with the telephone numbers and calls
3 during the Settlement Class Period in Plaintiff’s summary judgment motions.” *See*
4 Dkts. 375-1 (CMI), 375-2 (iQor), 415-6 (AFNI), and 415-7 (ERC). These
5 individuals received calls coded with a wrong number, as identified by Plaintiff’s
6 expert and presented to the Court in connection with Plaintiff’s summary judgment
7 motions. This makes clear that the Settlement releases only the calls that were and
8 would be before the Court at summary judgment and/or trial. The Court previously
9 preliminarily approved this Settlement Class and Plaintiff asks that the Court do so
10 at final approval as well. Dkt. 527, ¶¶ 8-9.

11 “Rule 23 provides district courts with broad authority at various stages in the
12 litigation to revisit class certification determinations and to redefine or decertify
13 classes as appropriate.” *Wang v. Chinese Daily News, Inc.*, 737 F.3d 538, 546 (9th
14 Cir. 2013). Where the amendment to the class definition is made in the context of
15 settlement on behalf of a previously certified class, and the amendments “would not
16 change any of the Court’s prior conclusions concerning the Rule 23 requirements,”
17 such amendments are generally proper. *Wallace v. Countrywide Home Loans, Inc.*,
18 2014 WL 12691582, at *4 (C.D. Cal. July 2, 2014). Moreover, courts freely
19 approve changes to the class definition that, like here, narrow the previous class
20 definition. *McCurley v. Royal Seas Cruises, Inc.*, 331 F.R.D. 142, 161-62 (S.D. Cal.
21 2019).

22 The parties’ proposed change to the class definition is largely clarifying as
23 opposed to substantive, making clear that the Settlement covers only the calls that
24 have been previously before the Court. Insofar as the amendment changes the scope
25 of the class, it necessarily narrows the Class by adding additional qualifications on
26 class membership. Thus, the Court should finally approve the amendment.

27 **C. The Notice Plan Complies with Rule 23(e)(1) and Due Process.**

28 Rule 23(e)(1) states that “[t]he court must direct notice in a reasonable

1 manner to all class members who would be bound by the proposal if giving notice
2 is justified by the parties' showing that the court will likely be able to: (i) approve
3 the proposal under Rule 23(e)(2); and (ii) certify the class for purposes of judgment
4 on the proposal." Class members are entitled to the "best notice that is practicable
5 under the circumstances" of any proposed settlement before it is finally approved
6 by the Court. FED. R. CIV. P. 23(c)(2)(B). "The notice may be by one or more of the
7 following: United States mail, electronic means, or other appropriate means." *Id.* To
8 comply with due process, notice must be "the best notice practicable under the
9 circumstances, including individual notice to all members who can be identified
10 through reasonable effort." *Amchem Prods. v. Windsor*, 521 U.S. 591, 617 (1997).
11 Notice must state in plain, easily understood language: (i) the nature of the action;
12 (ii) the definition of the class certified; (iii) the class claims, issues, or defenses; (iv)
13 that a class member may enter an appearance through an attorney if the member so
14 desires; (v) that the court will exclude from the class any member who requests
15 exclusion; (vi) the time and manner for requesting exclusion; and (vii) the binding
16 effect of a class judgment on members under Rule 23(c)(3). FED. R. CIV. P.
17 23(c)(2)(B).

18 All of the notices, attached to the Settlement Agreement, are drafted in plain
19 English, with Spanish versions available on the Settlement Website so they were
20 easy to understand. Agmt., Ex. C. They included key information about the
21 Settlement, including the deadlines to file a claim, to request exclusion or object to
22 the Settlement, and the date of the Final Approval Hearing. *Id.* The notices stated
23 the amount of the fee award Class Counsel would request, the amount of the
24 incentive award Plaintiff would request, and the rights that Settlement Class
25 Members would give up if they did not opt-out. *Id.* They also directed Settlement
26 Class Members to the Settlement Website for further information about copies of
27 the notices, Settlement Agreement, and key filings. *Id.* Likewise, the claim form
28 was simple to understand, available on the Settlement Website, and user friendly.

1 *Id.*; BG Rpt. ¶ 24.

2 As detailed above, Class Notice was effectuated through United States Mail
3 and email (“Direct Notice”). *See* BG Rpt. ¶¶ 20-21; *see also* Agr. §§ 9.03, 9.04. The
4 Settlement Administrator undertook a thorough multi-step process to determine
5 who was eligible to receive notice and where to send the Direct Notice. BG Rpt. ¶¶
6 6-15. This process ultimately resulted in notice going out to individuals connected
7 with 166,257 unique cell phones. *Id.* at ¶ 23.¹⁹ Similar notice plans are commonly
8 used in class actions like this one and constitute the best notice practicable under
9 the circumstances. *See, e.g., Loreto*, 2021 WL 3141208, at *12-13 (approving notice
10 plan of mailing notice form to individuals identified in defendant’s records).
11 Plaintiff also provided an interim class notice report to the Court on October 18,
12 2022. Dkt. 532.

13 Settlement Class Members had until December 19, 2022, ninety (90) days
14 from the Settlement Notice Date to submit a claim, and until November 18, 2022,
15 sixty (60) days from the Settlement Notice Date to object to the Settlement, or
16 request exclusion from the Settlement. Agr. §§ 2.09, 2.25-2.26. BrownGreer
17 received no objections and three valid opt-outs. BG Rpt. ¶¶ 44-46.

18 BrownGreer received a very large number of invalid claims. BrownGreer and
19 Class Counsel believe that this is a result of the Settlement receiving publicity on
20 public class action publication websites. BG Rpt. ¶ 36. This resulted in individuals
21 making claims who did not receive debt collection calls on behalf of DIRECTV, or
22 who did not receive calls from one of the four debt collectors that are encompassed
23 by the Settlement, or who were DIRECTV customers, or all of the above. These
24 claimants are not Class Members and will not receive payment.

25 BrownGreer took two additional steps to help cure and substantiate claims.
26

27 ¹⁹ In addition to direct notice, pursuant to the Settlement Agreement BrownGreer
28 established and operated a settlement website and a toll-free number for Class
Members to obtain information regarding the Settlement. BG Rpt., ¶¶ 24-25.

1 BG Rpt. ¶¶ 34-35. First, for 2,518 individuals for whom BrownGreer had a
 2 confidence interval of greater than 80% or for whom a manual review indicated that
 3 the claimant had the same information as BrownGreer’s records, BrownGreer sent a
 4 December 20, 2022 email to those individuals. *Id.* at ¶ 35. That email gave them 35
 5 days (until January 24, 2023) to tell BrownGreer that, if they were not actual Class
 6 Members; otherwise, they will receive payment. *Id.* Second, BrownGreer sent a
 7 follow up email to individuals who submitted an invalid claim electronically and
 8 that gives them an opportunity to cure their claim within 35 days (until January 24,
 9 2023) by providing a valid Notice ID. *Id.* at 36. The Notice ID field on the claim
 10 form was previously optional. *Id.* at 37. BrownGreer believes that making this field
 11 mandatory for curing claims ensures that valid claimants could cure their claims. *Id.*

12 BrownGreer will provide a supplemental report in advance of the February
 13 24, 2023 final approval hearing. At present, there are 4,851 valid claims. This
 14 represents a claims rate of 2.92% (4,851/166,257). This claims rate is within the
 15 range seen in other TCPA settlements.

TCPA Case Name ²⁰	Claims Rate
<i>Hung V. Vu D.D.S. v. I Care Credit, LLC</i> , 2022 U.S. Dist. LEXIS 201639, at *29 (C.D. Cal. Nov. 4, 2022)	Approving TCPA settlement with 3.8% claims rate (2,284 claims out of a class of “over 60,000” class members).
<i>Abante Rooter & Plumbing v. Pivotal Payments</i> , 2018 WL 8949777, at *4 (N.D. Cal. Oct. 15, 2018)	Approving TCPA settlement with 2.17% claims rate
<i>Stemple v. QC Holdings, Inc.</i> , 2016 WL 11783382, at *24 (S.D. Cal. Nov. 7, 2016)	Approving TCPA settlement with 3.08% claims rate
<i>Bayat v. Bank of the West</i> , 2015 WL 1744342, at *5 (N.D. Cal. Apr. 15, 2015)	Approving TCPA settlement with 1.9% claims rate

25 ²⁰ See also *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 944-45 (9th Cir. 2015) (affirming approval of settlement where 1,183,444 of 35 million class
 26 members—less than 3.4%—filed claims); *Poertner v. Gillette Co.*, 618 F. App’x
 27 624, 625-26, 630-31 (11th Cir. 2015) (affirming approval of settlement where
 28 55,346 of 7.26 million class members—less than 1%—filed claims); *Moore v. Verizon Commc’ns Inc.*, 2013 WL 4610764, at *8 (N.D. Cal. Aug. 28, 2013) (granting final approval of class action settlement with 3% claims rate).

1 2 3 4 5	<p><i>Rose</i>, 2014 WL 4273358, at *5</p> <p>Approving a 3% claims rate as “in line with recoveries obtained in similar TCPA class action settlements”</p>
6 7 8 9 10	<p><i>Grannan v. Alliant Law Grp., P.C.</i>, 2012 WL 216522, at *2-3 (N.D. Cal. Jan. 24, 2012)</p> <p>Approving TCPA settlement with 1.44% claims rate (1,986 claims out of the 137,891 potential class members)</p>

11 It is especially reasonable in light of the fact that the calls at issue in this case date
12 to as early as late 2008—almost fifteen years old—and none were after December
13 2015. The passage of time often leads to fewer claims. BG Rpt. ¶ 41, n.2. And
14 finally, the substantial number of invalid claims supports DIRECTV’s assertion that
15 the potential class size would be reduced through the claims process.

16 In any case, the manner and content of the Notice Plan complied with Rule
17 23 and due process. As such, the Court can and should grant final approval of the
18 settlement.

19 **CONCLUSION**

20 For the foregoing reasons, Plaintiff respectfully requests that the Court enter
21 an order granting final approval of the Settlement.

22 Dated: January 20, 2023

23 Respectfully submitted,

24 By: /s/ Daniel M. Hutchinson
Daniel M. Hutchinson

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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**

JENNY BROWN, on behalf of herself
and all others similarly situated,

Plaintiffs,

v.

DIRECTV, LLC,

Defendant.

Case No. 2:13-cv-01170-DMG-E

Hon. Dolly M. Gee

**[PROPOSED] ORDER GRANTING MOTION FOR FINAL APPROVAL OF
CLASS ACTION SETTLEMENT**

1. The Court having held a Final Approval Hearing on February 24, 2023, notice of the Final Approval Hearing having been duly given in accordance with this Court’s Order: (1) Preliminarily Approving Class Action Settlement, (2) Approving Notice Plan, and (3) Setting Final Approval Hearing (“Preliminary Approval Order”), and on the motion (“Motion”) for final approval of the Parties’ July 29, 2022 *Class Action Settlement Agreement and Release* (the “Settlement,” Dkt. 527), as well as Class Counsel’s motion for an award of attorneys’ fees and expenses and for Plaintiff’s service award. Due and adequate notice having been given to the Settlement Class Members of the Settlement and the pending motions,

1 as directed by the Court’s Preliminary Approval Order, and upon consideration of
2 all papers filed and proceedings had herein, and good cause appearing,

3 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** as follows:

4 2. The Settlement Agreement dated July 29, 2022, including its exhibits
5 (the “Settlement Agreement”), and the definitions of words and terms contained
6 therein are incorporated by reference in this Order. The terms of this Court’s
7 Preliminary Approval Order are also incorporated by reference in this Order.

8 3. This Court has subject matter jurisdiction over this matter pursuant to
9 28 U.S.C. § 1331 and 47 U.S.C. § 227 and has personal jurisdiction over the Parties
10 and the Settlement Class Members, including all members of the following
11 Settlement Class:

12 All persons residing within the United States who, within four years prior to
13 and after the filing of this action, received a non-emergency telephone call(s)
14 from DIRECTV and/or iQor, Inc., Credit Management, LP, AFNI, Inc, or
15 Enhanced Recovery Company, Inc. regarding a debt allegedly owed to
16 DIRECTV, to a cellular telephone through the use of an artificial or
17 prerecorded voice, and who has not been a DIRECTV customer at any time
18 since October 1, 2004. The Settlement Class encompasses only persons
19 associated with the telephone numbers and calls during the Settlement Class
20 Period in Plaintiff’s summary judgment motions. *See* Dkts. 375-1 (CMI),
21 375-2 (iQor), 415-6 (AFNI), and 415-7 (ERC). Excluded from the Settlement
22 Class are: (a) those persons who previously opted out in response to the
23 notice of class certification, identified in Dkt. 420-1, (b) any trial judge that
24 may preside over this case, (c) Defendant as well as any parent, subsidiary,
25 affiliate or control person of Defendant.

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

28 5. The Court finds and concludes that Class Notice was disseminated to

1 members of the Settlement Class in accordance with the terms set forth in the
2 Settlement Agreement and that Class Notice and its dissemination were in
3 compliance with this Court's Preliminary Approval Order. The Court finds that
4 such Notice Plan, including the approved forms of notice: (a) constituted the best
5 notice practicable under the circumstances; (b) included direct individual notice to
6 all Settlement Class Members who could be identified through reasonable effort; (c)
7 constituted notice that was reasonably calculated, under the circumstances, to
8 apprise Settlement Class Members of the nature of the Action, the definition of the
9 Settlement Class certified, the class claims and issues, the opportunity to enter an
10 appearance through an attorney if the member so desires; the opportunity, the time,
11 and manner for requesting exclusion from the Settlement Class, and the binding
12 effect of a class judgment; (d) constituted due, adequate and sufficient notice to all
13 persons entitled to notice; and (e) met all applicable requirements of Federal Rule
14 of Civil Procedure 23, due process under the U.S. Constitution, and any other
15 applicable law.

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

26 7. The Court reaffirms that this Action is properly maintained as a class
27 action, for settlement purposes only, pursuant to Federal Rules of Civil Procedure
28 23(a) and 23(b)(3).

1 8. The Court hereby finds and concludes that the Settlement Class meets
2 the requirements of numerosity, commonality, typicality, and adequacy as set forth
3 in Rule 23(a) of the Federal Rules of Civil Procedure. The Court further finds and
4 concludes that the Settlement Class meets the requirements of predominance,
5 superiority, and manageability as set forth in Rule 23(b)(3) of the Federal Rules of
6 Civil Procedure.

7 9. The Court reaffirms its appointment of Plaintiff Jenny Brown as Class
8 Representative to represent the Settlement Class and reaffirms its appointment of
9 Class Counsel to represent the Settlement Class.

10 10. The Court finds that the Settlement warrants final approval pursuant to
11 Rule 23(e)(2) because the Court finds the Settlement to be fair, reasonable, and
12 adequate and in the best interest of the Settlement Class, after weighing the relevant
13 considerations. First, the Court finds that Plaintiff and Class Counsel have
14 adequately represented the Settlement Class and will continue to do so through
15 Settlement implementation. Second, the Settlement was reached as a result of arms'
16 length negotiations among counsel for the Parties, assisted by an experienced
17 mediator, Robert Meyer of JAMS, and comes after ten (10) years of litigation and a
18 detailed and informed investigation and analysis by counsel for the parties. Third,
19 the Court finds that the relief proposed to be provided for the Settlement Class—a
20 non-reversionary settlement fund of \$17 million—is fair, reasonable, and adequate
21 taking into account, *inter alia*, the costs, risks, and delay of trial and appeal, the
22 alleged harm to Settlement Class Members, and the proposed method of
23 distributing payments to the Settlement Class Members. Fourth, the Court finds
24 that the Settlement treats all Settlement Class Members equitably relative to each
25 other accounting for the fact that certain Settlement Class Members' claims had
26 been granted summary judgment, Dkt. 401, and others had not. Under the terms of
27 the Settlement, all Settlement Class Members who submitted a timely and valid
28 Claim Form will be sent a *pro rata* distribution, as specified in the Settlement, of

1 the \$17 million settlement proceeds after reduction of the Settlement Costs (*i.e.*, (i)
2 settlement and administration costs; (ii) Class Counsel attorneys' fees and expenses
3 awarded by the Court; (iii) any Court-approved service award paid to the Class
4 Representative; and (iv) any taxes incurred by the Settlement Fund).

5 11. The motion is hereby GRANTED, and the Settlement and its terms are
6 hereby found to be and APPROVED as fair, reasonable, and adequate and in the
7 best interest of the Settlement Class. The Parties and Claims Administrator are
8 directed to consummate and implement the Settlement in accordance with its terms.

9 12. This Court hereby dismisses this Action, with prejudice and without
10 leave to amend and without costs to any Party, other than as specified in the
11 Settlement, in this Final Approval Order, and in any order(s) by this Court
12 regarding Class Counsel's motion for attorneys' fees, expenses, and service awards.

13 13. In consideration of the benefits provided under the Settlement,
14 Plaintiff and each Settlement Class Member who has not requested exclusion shall,
15 by operation of this Final Approval Order, have forever released all Released
16 Claims against all Released Parties in accordance with Sections 2.25 and 14 of the
17 Settlement, the terms of which sections are incorporated herein by reference. The
18 terms of the Settlement, which are incorporated by reference into this Final
19 Approval Order, shall have res judicata and other preclusive effects as to the
20 Released Claims as against the Released Parties. The Released Parties may file the
21 Settlement and/or this Final Approval Order in any other litigation to support a
22 defense or counterclaim based on principles of res judicata, collateral estoppel,
23 release, good-faith settlement, judgment bar or reduction, or any similar defense or
24 counterclaim.

25 14. Plaintiff and each Settlement Class Member, as well as their respective
26 assigns, heirs, executors, administrators, successors, and agents, hereby release,
27 resolve, relinquish, and discharge each and all of the Released Parties from each of
28 the Released Claims. Plaintiff and the Settlement Class Members further agree that

1 they will not institute any action or cause of action (in law, in equity or
2 administratively), suits, debts, liens, or claims, known or unknown, fixed or
3 contingent, which they may have or claim to have, in state or federal court, in
4 arbitration, or with any state, federal or local government agency or with any
5 administrative or advisory body, arising from or reasonably related to the Released
6 Claims. This permanent bar and injunction is necessary to protect and effectuate
7 the Settlement Agreement, this Order, and this Court's authority to effectuate the
8 Settlement Agreement, and is ordered in aid of this Court's jurisdiction and to
9 protect its judgments. Notwithstanding the foregoing, nothing in this Final
10 Approval Order and judgment shall preclude an action to enforce the terms of the
11 Settlement.

12 15. This Final Approval Order is the final, appealable judgment in the
13 Action as to all Released Claims.

14 16. Without affecting the finality of this Final Approval Order in any way,
15 this Court retains jurisdiction over (a) implementation of the Settlement and the
16 terms of the Settlement; (b) Class Counsel's motion for attorneys' fees, expenses,
17 and service awards; (c) distribution of the Settlement Fund, Class Counsel
18 attorneys' fees and expenses, and Plaintiff's service award; and (d) all other
19 proceedings related to the implementation, interpretation, validity, administration,
20 consummation, and enforcement of the terms of the Settlement. The time to appeal
21 from this Final Order and Judgment shall commence upon its entry.

22 17. In the event that the Effective Date does not occur, this Final Approval
23 Order shall be rendered null and void and shall be vacated, *nunc pro tunc*, except
24 insofar as expressly provided to the contrary in the Settlement, and without
25 prejudice to the status quo ante rights of Plaintiff, Settlement Class Members, and
26 DIRECTV.

27 18. The Settlement Agreement (including, without limitation, its exhibits),
28 and any and all negotiations, documents, and discussions associated with it, shall

1 not be deemed or construed to be an admission or evidence of any violation of any
2 statute, law, rule, regulation or principle of common law or equity, of any liability
3 or wrongdoing, by DIRECTV, or of the truth of any of the claims asserted by
4 Plaintiff in the Action. Further, the Settlement Agreement and any and all
5 negotiations, documents, and discussions associated with it, will not be deemed or
6 construed to be an admission by DIRECTV that the Action is properly brought on a
7 class or representative basis, or that classes may be certified for any purpose. To
8 this end, the settlement of the Action, the negotiation and execution of the
9 Settlement Agreement, and all acts performed or documents executed pursuant to or
10 related to the Settlement Agreement: (i) are not and will not be deemed to be, and
11 may not be used as, an admission or evidence of any wrongdoing or liability on the
12 part of DIRECTV or of the truth of any of the allegations in the Action; (ii) are not
13 and will not be deemed to be, and may not be used as an admission or evidence of
14 any fault or omission on the part of DIRECTV in any civil, criminal, or
15 administrative proceeding in any court, arbitration forum, administrative agency, or
16 other tribunal; and, (iii) are not and will not be deemed to be and may not be used
17 as an admission of the appropriateness of these or similar claims for class
18 certification. Further, evidence relating to the Settlement Agreement shall not be
19 discoverable or used, directly or indirectly, in any way, whether in the Action or in
20 any other action or proceeding, except for purposes of enforcing the terms and
21 conditions of the Settlement Agreement, the Preliminary Approval Order, and/or
22 this Order.

23 19. In the event that any provision of the Settlement or this Order is
24 asserted by DIRECTV as a defense in whole or in part (including, without
25 limitation, as a basis for a stay) in any other suit, action, or proceeding brought by a
26 Settlement Class Member or any person actually or purportedly acting on behalf of
27 any Settlement Class Member(s), DIRECTV may seek an immediate stay of that
28 suit, action or other proceeding, which the Settlement Class Member shall not

1 oppose, until this Court or the court or tribunal in which the claim is pending has
2 determined any issues related to such defense or assertion. Solely for purposes of
3 such suit, action, or other proceeding, to the fullest extent they may effectively do
4 so under applicable law, the Parties irrevocably waive and agree not to assert, by
5 way of motion, as a defense or otherwise, any claim or objection that they are not
6 subject to the jurisdiction of this Court, or that this Court is, in any way, an
7 improper venue or an inconvenient forum. These provisions are necessary to
8 protect the Settlement Agreement, this Order and this Court’s authority to
9 effectuate the Settlement, and are ordered in aid of this Court’s jurisdiction and to
10 protect its judgment.

11 20. The Court awards Class Counsel attorneys’ fees of \$5,666,666.66
12 (one-third of the Settlement Fund) and reimbursement of expenses in the amount of
13 \$869,303.55, and awards Plaintiff Jenny Brown \$10,000 as a service award, with
14 such attorneys’ fees, expenses, and service award to be paid from the Settlement
15 Fund pursuant to the terms of the Settlement.

16 21. Finding that there is no just reason for delay, the Clerk of the Court is
17 directed to enter this Order on the docket and it shall serve as final judgment
18 pursuant to Rule 54(b) forthwith.

19
20 IT IS SO ORDERED

21
22
23 DATED: February __, 2023

24 HON. DOLLY M. GEE

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