

1 Jahan C. Sagafi (Cal. Bar No. 224887)
2 jsagafi@outtengolden.com
3 Relic Sun (Cal. Bar No. 306701)
4 rsun@outtengolden.com
5 OUTTEN & GOLDEN LLP
6 One Embarcadero Center, 38th Floor
San Francisco, California 94111
Telephone: (415) 638-8800
Facsimile: (415) 638-8810

Jason C. Marsili (Cal. Bar No. 233980)
jmarsili@posner-rosen.com
Brianna M. Primozic (Cal. Bar No. 274397)
bprimozic@posner-rosen.com
POSNER & ROSEN LLP
3600 Wilshire Boulevard, Suite 1800
Los Angeles, California 90010
Telephone: (213) 389-6050
Facsimile: (213) 389-0663

7 Michael N. Litrownik (*pro hac vice*)
8 mlitrownik@outtengolden.com
9 685 Third Avenue, 25th Floor
10 New York, New York 10017
Telephone: (212) 245-1000
Facsimile: (646) 509-2060

11 *Attorneys for Plaintiffs and Settlement Classes*

12 **UNITED STATES DISTRICT COURT**
13 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
14 **SAN FRANCISCO DIVISION**

15 WENDELL WALTON and MICHAEL
16 MANTONYA, individually and on behalf
of all others similarly situated,
Plaintiffs,

17 v.

18 AT&T SERVICES, INC.,
19 Defendant.

Case Number: 15-cv-03653-VC

**[PROPOSED] ORDER GRANTING
FINAL APPROVAL OF SETTLEMENT
AND FINAL JUDGMENT**

1 On February 1, 2018, a hearing was held on the unopposed motion of Plaintiffs Wendell
2 Walton and Michael Mantonya (“Plaintiffs”) for final approval of the class settlement; and on the
3 separate motions of Plaintiffs and their counsel for awards of the Class Representative Service
4 Payments and the Class Counsel Attorneys’ Fees and Costs Payment. Jahan C. Sagafi and Relic
5 Sun appeared for Plaintiffs. Paul Berkowitz appeared for Defendant AT&T Services, Inc.
6 (“AT&T”).

7 The Parties have submitted their Stipulation of Class Settlement and Release (the
8 “Settlement”), which this Court preliminarily approved in its October 19, 2017 order (the
9 “Preliminary Approval Order”). In accordance with the Preliminary Approval Order, Class
10 Members have been given notice of the terms of the Settlement and the opportunity to submit a
11 claim form, comment on the settlement, and/or opt out of its provisions. In addition, pursuant to
12 the Class Action Fairness Act of 2005, 28 U.S.C. § 1715 (“CAFA”), AT&T has given the
13 Attorney General of the United States and the appropriate state officials in the states in which the
14 Class Members reside timely notice of the Settlement.

15 Having received and considered the Settlement, the supporting papers filed by the Parties,
16 and the evidence and argument received by the Court at the final approval hearing on February 2,
17 2018, by means of this order (the “Final Approval Order”) the Court grants final approval to the
18 Settlement, and HEREBY ORDERS and MAKES DETERMINATIONS as follows:

19 **Definitions**

20 1. Except as otherwise specified herein, the Court for purposes of this Final
21 Approval Order adopts all defined terms set forth in the Settlement.

22 **Jurisdiction**

23 2. This Court has jurisdiction over the subject matter of this litigation and all related
24 matters and all state and federal claims raised in this action and released in the Settlement, and
25 personal jurisdiction over AT&T and all Class Members (except for those who timely filed opt
26 out requests). Specifically, this Court has federal question jurisdiction over this action pursuant
27
28

1 to 28 U.S.C. section 1331 and section 16(b) of the Fair Labor Standards Act (“FLSA”), 29
2 U.S.C. § 216(b).

3 3. This Court also has supplemental jurisdiction over all state-law claims asserted by
4 Plaintiffs because the state-law claims derive from a common nucleus of operative fact and form
5 part of the same case or controversy as those claims over which the Court has primary
6 jurisdiction. *See* 28 U.S.C. § 1367 (providing for supplemental jurisdiction over related state-
7 law claims that “form part of the same case or controversy”); *United Mine Workers v. Gibbs*, 383
8 U.S. 715, 726 (1996) (holding that federal courts have supplemental jurisdiction over state law
9 claims that arise from the same “common nucleus of operative fact” such that the parties “would
10 ordinarily be expected to try them all in one judicial proceeding”).

11 4. This Court also has jurisdiction to approve the Settlement’s release of claims by
12 Class Members over which the Court has jurisdiction, even if the Court would not independently
13 have jurisdiction over those released claims. *See Reyn’s Pasta Bella, LLC v. Visa USA, Inc.*, 442
14 F.3d 741, 748 (9th Cir. 2006) (quoting *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1287-88
15 (9th Cir. 1992) (“[A] federal court may release not only claims alleged in the complaint, but also
16 state claims arising from the same nucleus of operative facts over which the court would not
17 have jurisdictional competence.”)).

18 **Dissemination of Notice to Class Members**

19 5. Pursuant to the Preliminary Approval Order, the notice documents were sent to
20 each Class Member by email and by first-class mail. The notice was clear and organized,
21 following the model forms provided by the Federal Judicial Center at www.fjc.gov. The notice
22 materials informed Class Members of the terms of the Settlement, how their settlement share
23 would be calculated, how to receive their settlement share, the requirement of signing the
24 Arbitration Agreement to receive payment, their right to comment on (including object to) the
25 Settlement or opt out of the Settlement to pursue their claims individually, and their right to
26 appear in person or by counsel at the final approval hearing and be heard regarding approval of
27 the Settlement. Adequate periods of time were provided by each of these procedures.
28

1 6. The Court finds and determines that this notice procedure afforded adequate
2 protections to Class Members and provides the basis for the Court to make an informed decision
3 regarding approval of the Settlement based on the responses of Class Members. Notice was
4 accomplished in the manner prescribed by the Settlement. The Court finds and determines that
5 the notice provided in this case was the best notice practicable, which satisfied the requirements
6 of law and due process.

7 **Notice to Attorneys General Pursuant to CAFA**

8 7. Pursuant to CAFA, within 10 days after the filing of the motion seeking
9 preliminary approval of the Settlement, JND Legal Administration, on behalf of AT&T, served
10 upon the Attorney General of the United States and the appropriate state officials of the states in
11 which the Class Members reside a notice of the Settlement consisting of: a copy of the complaint
12 in this action; a notice of the scheduled judicial hearing in this class action; copies of the
13 Settlement; and the proposed Notice. The Notice of Settlement also invited comment on the
14 Settlement. This Final Approval Order is being entered at least 90 days after the later of the
15 dates on which the appropriate federal and state officials were served with the notice of proposed
16 settlement.

17 8. The Court finds and determines that AT&T's notice of Settlement was timely,
18 adequate, and compliant with the statutory requirements of CAFA. Accordingly, 28 U.S.C.
19 §1715(e) has no application to the Settlement.

20 **Certification Under Fed. R. Civ. P. 23 And the FLSA**

21 9. For the reasons stated in the Preliminary Approval Order, this Court finds and
22 determines that the proposed Settlement Class, as defined in paragraph 3 of the Settlement and in
23 section II of its Preliminary Approval Order, meets all of the legal requirements for class
24 certification under Federal Rule of Civil Procedure 23 ("Rule 23") (a) and (b)(3), and it is hereby
25 ordered that the Settlement Class is finally approved and certified as a Class for purposes of
26 settlement of this action.

1 10. This Court finds and determines that the action meets all of the legal requirements
2 for certification as a collective action under section 16(b) of the FLSA, 29 U.S.C. § 216(b), for
3 the three-year period preceding the filing of Plaintiffs' complaint, and it is hereby ordered that
4 the action is certified as a collective action for purposes of settlement of this action.

5 **Fairness**

6 11. Pursuant to Rule 23(e), the Court further finds and determines that the terms of
7 the Settlement are fair, reasonable and adequate to the Class and to each Class Member and that
8 the Class Members who have not opted out will be bound by the Settlement, that the Settlement
9 is ordered finally approved, and that all terms and provisions of the Settlement should be and
10 hereby are ordered to be consummated. The Court specifically finds that the Settlement is
11 rationally related to the strength of Plaintiffs' claims given the risk, expense, complexity, and
12 duration of further litigation. This Court also finds that the Settlement is the result of arms-
13 length negotiations between experienced counsel representing the interests of the Class Members
14 and AT&T, under the supervision of an experienced and independent third-party mediator, after
15 thorough factual and legal investigation. *Staton v. Boeing*, 327 F.3d 938, 960 (9th Cir. 2003);
16 *Class Plaintiffs*, 955 F.2d at 1291.

17 12. The Court finds and determines that the payments to be made to the Class
18 Members as provided for in the Settlement are fair and reasonable. The proposed plan of
19 allocation bases each Class Member's recovery on (a) the number of weeks during the Covered
20 Period the Class Member worked, (b) the Class Member's job position, and (c) whether the Class
21 Member worked in California. The plan of allocation is rational. The Court hereby gives final
22 approval to and orders the payment of those amounts be made to the claimants out of the Net
23 Fund Value in accordance with the terms of the Settlement.

24 **Class Member Response**

25 13. The Court further finds that the response of the Class Members to the Settlement
26 supports settlement approval. Of the 404 Class Members, only one opted out of the Settlement.
27 No Class Members objected to the Settlement.
28

1 **Appointment of Class Representative; Class Representative And Witness Service**
2 **Awards**

3 14. The Court confirms as final the appointment of Wendell Walton and Michael
4 Mantonya as Class Representatives of the Rule 23 Class and the nationwide FLSA Class under
5 section 16(b). The Court finds and determines that the award of \$20,000 each to Mr. Walton and
6 Mr. Mantonya for their services as Class Representatives, in addition to their Individual
7 Settlement Payments, is fair and reasonable. The Court also finds and determines that the
8 witness service awards of \$5,000 each to Carolyn Castille, Gary Fujino, Janet Condon, Teresa
9 Swigart, Ronald Hansen, Catherine Brown, and Ursula Gulley for their services as witnesses, in
10 addition to their Individual Settlement Payments, is fair and reasonable.

11 15. Plaintiffs have satisfied the criteria as set forth in *Staton v. Boeing Co.*, 327 F.3d
12 938 (9th Cir. 2003). Under *Staton*, such awards should be evaluated using “relevant factors,
13 includ[ing] the actions the plaintiff has taken to protect the interests of the class, the degree to
14 which the class has benefitted from those actions, . . . the amount of time and effort the plaintiff
15 expended in pursuing the litigation . . . and reasonabl[e] fear[s of] workplace retaliation.” *Staton*,
16 327 F.3d at 977 (quoting *Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998)) (internal
17 quotation marks omitted) (alterations in original). Here, the Class Representatives’ initiation of
18 this suit caused them personal exposure and potential adverse consequences with future
19 employers. Likewise, Messrs. Fujino and Hansen and Mses. Castille, Condon, Swigart, Brown,
20 and Gulley have taken risks by affiliating themselves publicly with the lawsuit; their testimony
21 enhanced the case’s value overall by providing support for Plaintiffs’ motion to certify the FLSA
22 collective and their liability arguments.

23 16. The Class Representatives’ assertion of state law claims on behalf of their fellow
24 Class Members tolled the statutes of limitations for those state law claims, to the benefit of the
25 Class Members who worked or work in those states. Furthermore, Class Counsel attest that
26 Messrs. Walton and Mantonya were substantially involved throughout the litigation, educating
27 Class Counsel regarding Class Members’ job duties and AT&T’s policies and procedures.
28

1 Messrs. Walton and Mantonya also sat for depositions in this case. The Court hereby approves
2 the Class Representative and Witness Service Awards as set forth herein be made to Class
3 Representatives, Messrs. Fujino and Hansen, and Meses. Castille, Condon, Swigart, Brown, and
4 Gulley out of the Qualified Settlement Fund in accordance with the terms of the Settlement.

5 **Appointment of Class Counsel; Attorneys' Fees And Costs**

6 17. Class counsel attest to performing substantial work on behalf of the class
7 members, totaling \$1,658,069.00 in lodestar. The Court finds the hours worked by Class
8 Counsel to be reasonably incurred, for the benefit of the class members. Class Counsel's hourly
9 rates, ranging from \$235.00 to \$285.00 for staff and \$250.00 to \$850.00 for attorneys, are
10 reasonable in light of the market for legal services of this type and quality. The Court confirms
11 as final the appointment of the following law firms and attorneys as class counsel ("Class
12 Counsel") for the Rule 23 and FLSA Classes: Jahan C. Sagafi, Michael N. Litrownik, and Relic
13 Sun of Outten & Golden LLP and Jason Marsili and Brianna Primozic of Posner & Rosen LLP.
14 The Court finds and determines that the payment of \$962,500 in attorneys' fees and \$53,823.85
15 in litigation costs and expenses, for a total payment of \$1,016,323.85 to Class Counsel, is fair
16 and reasonable and consistent with Ninth Circuit fee jurisprudence. *See, e.g., Vizcaino v.*
17 *Microsoft Corp.*, 290 F.3d 1043 (9th Cir. 2002); *Chemical Bank v. City of Seattle (In re*
18 *Washington Public Power Supply Sec. Litig.)*, 19 F.3d 1291, 1297 (9th Cir. 1994). This fee is
19 35% of the total fund, which is consistent with the Ninth Circuit's 25% benchmark for megafund
20 class action settlements of \$50-200 million, recognizing that the benchmark is typically adjusted
21 downward for larger cases and upward for smaller cases. Under a lodestar cross-check, the
22 lodestar multiplier is 0.58x, which strongly supports the fee award. The Court hereby gives final
23 approval to and orders that that payment of that amount be made to Class Counsel out of the
24 Gross Fund Value in accordance with the terms of the Settlement.

1 **Settlement Administrator Report**

2 18. Upon completion of administration of the Settlement, the Settlement
3 Administrator will provide written certification of such completion to the Court and counsel for
4 the Parties.

5 **Release**

6 19. By operation of the entry of this Final Approval Order and pursuant to the
7 Settlement, all Qualified Claimants are permanently barred from prosecuting against AT&T any
8 Participating Class Member Released Claim as set forth in paragraph 24 of the Settlement. The
9 Court has reviewed the release in paragraph 24 of the Settlement and finds it to be fair,
10 reasonable, and enforceable under Rule 23, the FLSA, and all other applicable law.

11 **Contingency on Finality**

12 20. If, for any reason, the Settlement ultimately does not become Final (as defined in
13 the Settlement, paragraph 15.a.), this Final Approval Order will be vacated; the Parties will
14 return to their respective positions in this action as those positions existed immediately before the
15 parties executed the Settlement; and nothing stated in the Settlement or any other papers filed
16 with this Court in connection with the Settlement will be deemed an admission of any kind by
17 any of the Parties or used as evidence against, or over the objection of, any of the Parties for any
18 purpose in this action or in any other action.

19 **Final Judgment and Dismissal**

20 22. By means of this Final Approval Order, this Court hereby enters final judgment in
21 this action, as defined in Federal Rule of Procedure 58(a)(1).

22 23. Without affecting the finality of the Court's judgment in any way, the Court
23 retains jurisdiction over this matter for purposes of resolving issues relating to interpretation,
24 administration, implementation, effectuation and enforcement of the Settlement. Nothing in this
25 Final Approval Order will preclude any action to enforce the Parties' obligations under the
26 Settlement or under this order, including the requirement that AT&T make the settlement
27 payments in accordance with the terms of the Settlement.

1 24. The Parties are hereby ordered to comply with the terms of the Settlement.

2 25. This action is dismissed with prejudice, each side to bear its own costs and
3 attorneys' fees except as provided by the Settlement and the Court's orders.

4

5

6 Dated: February 14, 2018



7 _____
The Honorable Vince Chhabria
United States District Judge

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28