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6 SUPERIOR COURT OF THE STATE OF CALIFORNIA
7 COUNTY OF SAN DIEGO

8 UTILITY CONSUMERS' ACTION
9 NETWORK (UCAN), and Michael Frey and
Vicki Frey, dba The Barking Lot, on behalf of
10 themselves and all others similarly situated and
the general public,

11 Plaintiffs,

12 vs.

14 AT&T COMMUNICATIONS OF
CALIFORNIA, INC., AT&T
15 COMMUNICATIONS, INC., and DOES 1
through 25, inclusive,

16 Defendants

) Case No. GIC 837830

) **CLASS ACTION**

) DECLARATION OF ALAN M.
MANSFIELD IN SUPPORT OF
13 PLAINTIFFS' APPLICATION FOR FINAL
APPROVAL OF CLASS ACTION
14 SETTLEMENT

) Date: June 9, 2006

) Time: 9:00 a.m.

) I/C Judge: Hon. Linda B. Quinn
17 Dept. : 74

) Complaint filed: October 27, 2004
18)
19 _____)

20 I, ALAN M. MANSFIELD , respectfully come before this Court and declare as follows:

21 1. I am an attorney duly licensed to practice law and a member in good standing with
22 the State Bar of California. I am a member of the law firm of Rosner, Law & Mansfield LLP,
23 counsel for plaintiffs and the Class, and am competent to testify to the matters declared herein.

24 2. I have been actively involved in the litigation of this action since October 2004.
25 Along with my partner Hallen D. Rosner, I was also the primary negotiator of the settlement in
26 this action. I am thus familiar with the proceedings and settlement in this action and the possible
27 risks we faced in reaching a successful resolution of the action, as well as the factors we
28 considered in agreeing to resolve this action on the terms set forth in the Amended Stipulation of

1 Settlement. If called upon as a witness, I would be competent to testify that the following facts
2 are true and correct to the best of my personal knowledge.

3 3. As set forth below, through plaintiffs' counsel's diligent prosecution of this case,
4 we reached a settlement with Defendants AT&T Corp., AT&T Communications of California,
5 Inc. and AT&T Communications, Inc. (collectively, "AT&T"). It is a result I submit is fair,
6 reasonable, adequate, and in the best interests of all Class members and should, therefore, be
7 finally approved by the Court.

8 4. My previous Declaration submitted in support of the joint application for
9 preliminary approval of this settlement set forth several of the factors we considered in entering
10 into this settlement with AT&T. Those facts will not be re-stated here, but provide further
11 support of the reasonableness of this settlement. This Declaration sets forth the additional factors
12 we considered in agreeing to the settlement, and an explanation of the terms of the settlement and
13 why it provides Class members the opportunity to obtain a significant percentage of their
14 recoverable out of pocket costs attributable to charges for the Long Distance Federal Carrier Line
15 Charge fees ("FCLC fees") during the class period (agreed by the parties to be between October
16 1, 2002 through January 31, 2005). While the following is not all-inclusive of the proceedings
17 and the efforts of plaintiffs' counsel in litigating this case and negotiating this settlement, it is
18 intended to give the Court an idea of the scope, risk, and complexity of this action, and the
19 factors we considered in negotiating the settlement. This Declaration also provides the Court
20 with a summary of the attorneys' fees and costs my firm has incurred in prosecuting and
21 resolving this action and the evidence establishing the reasonableness of the submitted lodestar.

22 5. The settlement in this action was reached only after plaintiffs had undertaken
23 extensive discovery and reviewed several thousand pages of documents, after motion practice
24 directed at the pleadings, and after a mediation session and several follow-up negotiations
25 through the Honorable Howard B. Wiener (Ret.). A broad range of both legal and factual issues
26 presented themselves during the course of prosecuting and resolving this action. We analyzed
27 these issues and concluded that, while the case possessed merit, there were substantial risk
28 factors in proving the case at trial and in obtaining a greater recovery on behalf of the Class than

1 achieved through this settlement. Despite these constraints, plaintiffs' counsel confronted these
2 issues in litigating the claims of the Class and in our face-to-face dealings with experienced and
3 highly regarded defense counsel.

4 6. Under the terms of this settlement, members of the nationwide class who submit a
5 timely and fully completed claim form before July 15, 2006 will receive, if they are current
6 customers, a bill credit for \$30.00, and if they are former customers, either a check for \$30.00 or
7 an AT&T calling card valued at \$50.00, at their option.

8 7. In addition, in recognition of the substantial efforts by plaintiffs' counsel and the
9 benefits achieved for the Class through this settlement, plaintiffs' counsel are, as an integrated
10 term within the Amended Stipulation of Settlement, to receive payment of their attorneys' fees
11 and reimbursement of their costs and expenses as agreed to by the parties in the amount of
12 \$487,500, which also includes reimbursement for over \$10,000 in litigation expenses. We also
13 agreed to payment to the class representatives collectively totaling \$2,000 for the over thirty
14 hours they expended in their roles as class representatives in this litigation.

15 8. After significant pre-trial investigation, the original class action complaint was
16 filed on October 27, 2004. AT&T originally filed motions directed at the pleadings raising
17 numerous issues, which after full briefing and a hearing were ultimately granted as to UCAN.

18 9. The parties next engaged in rounds of discovery, primarily consisting of document
19 requests and interrogatory responses, that generated written responses and over 2,000 pages of
20 documents produced by AT&T. This information was reviewed in detail by both me and the
21 associates within my firm listed below. All this information was relevant in establishing both the
22 strengths and weaknesses of this action, as well as the number of class members affected by this
23 practice. AT&T's counsel fully cooperated in the discovery process so that motions to compel
24 were not required

25 10. As far as class certification issues were concerned, a portion of the written
26 discovery requested went to the issue of certifying a class on both a state-wide and national basis.
27 The parties reviewed this information and were in the process of addressing class certification
28

1 issues and determining if a stipulation could be reached on some if not all of the class
2 certification issues at the time this matter was resolved.

3 11. After engaging in months of telephonic meetings and face-to-face discussions
4 over the terms of a class-wide settlement based on the above information, on November 8, 2005,
5 the parties engaged in extensive negotiations that were informed and arms'-length with the
6 assistance of a respected, experienced mediator, the Hon. Howard B. Wiener (Ret.). Those
7 negotiations continued after that mediation, until the parties reached agreement on all the
8 principal terms of a settlement. Once those terms had been agreed to, documented, and initially
9 submitted to the Court, in the process of beginning to implement those terms AT&T determined
10 that the logistics of implementing the original settlement would result in a significant expenditure
11 of money that could result in fewer, rather than more, class members submitting claims. In
12 addition, it was confirmed the FCLC fees had been modified and a different fee properly located
13 and described in January 2005, not December 2005 as previously thought. After further
14 discussions and negotiations we agreed to revise the settlement terms to make cancellation no
15 longer a requirement for payment as far as current customer class members were concerned, then
16 adjusted the payment benefit so that present and former class members would receive the same
17 amount based on AT&T's agreement to waive that condition, as well as based on the shorter
18 class period. We agreed to this change as we believed it made it significantly easier for class
19 members to make a claim rather than decide whether to cancel service and simplified the claim
20 form, and thus would likely result in more class members receiving benefits under the terms of
21 the settlement at the adjusted level of compensation.

22 12. After reaching an agreement in principle I engaged in the time-consuming process
23 of negotiating the Stipulation of Settlement and the accompanying exhibits with AT&T's
24 counsel. This process took close to a month to complete. That process in itself raised numerous
25 issues that, even though the settlement had been agreed to in principle, required numerous
26 conferences between counsel to resolve. Then, when AT&T explained the problems it was
27 having in implementing the terms of the original agreement, we engaged in another round of
28

1 negotiations and revised the existing settlement documents to reflect the results of those
2 negotiations, resulting in the Amended Stipulation of Settlement.

3 13. These negotiations had gone on for several months before meeting with Justice
4 Wiener, and thereafter with the negotiations over the terms of the Amended Stipulation of
5 Settlement, through the end of February 2006. Experienced counsel on both sides view this
6 settlement favorably, and with the assistance of Justice Wiener were able to ensure these were
7 arms'-length, non-collusive negotiations. In addition, the fee and expense components of the
8 settlement were only negotiated after the original settlement terms were agreed to in principle,
9 again with the assistance of Justice Wiener, all to ensure these fee negotiations did not
10 compromise or conflict with the benefits being made available to the members of the Class.

11 14. I believe that plaintiffs have a solid case, both individually and on a class-wide
12 basis, and that the settlement embodied in the Amended Stipulation of Settlement could never
13 have been achieved without the motion practice and discovery that took place in this case.

14 15. Despite the relative strength of plaintiffs' claims in this action, however,
15 continued prosecution of this action was not without considerable risk in terms of recovering
16 significant monetary relief for the Class members, when compared to what the individual Class
17 members are provided the opportunity to obtain under this settlement. After considering the
18 burden of proof we might be forced to sustain, the substantial additional effort, expense, risks of
19 adverse rulings, and the delays necessary to complete a trial on the merits and to resolve post-trial
20 motions and inevitable appeals even in the event of a favorable result, compared to the benefits
21 achieved through this settlement, I believe that the settlement is a fair, reasonable, and adequate
22 result for the Class.

23 16. The Complaint sought damages on behalf of the Class, based on the amount of the
24 monthly FCLC fees paid by Class members during the class period. The benefits provided to the
25 Class members are well within the range of possible recovery, as the negotiated recovery results
26 in Class members having the ability to obtain a significant percentage of their estimated losses
27 incurred during the class period, or the right to opt out and pursue individual claims if they
28 believe they are entitled to a greater recovery.

1 17. In calculating what Class members might be entitled to in this litigation assuming
2 that liability was established in comparison to what is being made available to Class members
3 under the terms of this settlement, we identified 2 issues: (1) ensuring the charge was correctly
4 identified on future bills, since the dispute focused on one of disclosure and whether the FCLC
5 fees were being charged for a certain purpose that was not permitted under the law; and (2)
6 reimbursing the out of pocket losses for Class members who paid for FCLC fees during the class
7 period. As to the first issue, after this litigation was initiated, the FCLC charge was modified and
8 another charge, accurately described in a manner acceptable to the parties, was placed in the
9 correct section of AT&T monthly bills. Thus, the conduct that this suit sought to redress in terms
10 of disclosure has been resolved.

11 18. As to the second issue, based our own damage analysis, the amounts made
12 available to Class members as detailed above would result in repayment of a significant
13 percentage of the potentially provable out-of-pocket losses Class members incurred. The FCLC
14 monthly fees ranged from \$1.00 in October 2002 to \$3.95 as of January 2005. Based on the
15 average 18 months a class member would have been a single line business customer of AT&T,
16 we revised our initial calculations based on the revised class period to determine that the average
17 out of pocket loss was in the range of \$40.00, and would likely not be more than \$55.00 based on
18 the dollar amount of the FCLC during the entire 28 month class period. Thus, a \$30.00 payment
19 without the need to establish reliance or cancel service would on average result in a return of
20 75% of a Class members' out of pocket losses, and would likely require less proof to obtain than
21 if the claims were litigated at trial, depending on the rulings of the Court as to what proof would
22 be required to make a claim under a favorable jury verdict. Just looking at the close to 300,000
23 class members who are current customers and are entitled to \$30.00 each, the value of this
24 settlement is conservatively valued overall at close to \$9 million, and substantially more when
25 the Court includes the former customers. In addition, if a former customer Class member elects
26 to receive the \$50.00 calling card, in terms of value received they could actually obtain close to
27 100% of the maximum losses they might have sustained if they were a class member for the
28 entire class period, making the settlement even more valuable if this option is elected.

1 19. We thus attempted in these negotiations to tailor the relief provided for in this
2 settlement to the needs of specific Class members and to obtain the return of a significant
3 percentage of their average out of pocket losses.

4 20. Plaintiffs faced a number of risks of continuing with this case through trial and in
5 obtaining significant relief for the Class, greater than provided under this settlement. In
6 attempting to establish liability and damages, we faced the risks that there would be disputes
7 whether the FCLC fees were in fact accurately described; if they were not, if any mistake in the
8 description was either inadvertent or material; whether reliance would be found to be an element
9 of such claims and if so how would it be established; whether AT&T remedied the disclosure
10 issue and if so when, and the average out of pocket expenses Class members incurred in paying
11 such fees. The range of recovery went from zero, if the jurors accepted AT&T's arguments, to
12 payment of the actual out of pocket expenditures for every Class member for these fees, totaling
13 several million dollars. Even these damages could be limited because (1) the Court might have
14 required Class members establish reliance on the stated reason for these charges, (2) after the
15 lawsuit was filed, AT&T implemented a revised disclosure and claims to have provided refunds
16 to those who complained, and (3) the Court might require Class members submit individual
17 claims with documentation or agree to cancel their AT&T service to show the representation
18 about the FCLC fees were material. If AT&T was successful with any of these claims,
19 recoverable damages could be eliminated or substantially reduced. In addition, if AT&T was
20 successful in convincing the Court that, once liability was established, each individual Class
21 member would need to prove a separate entitlement to their out of pocket losses based on
22 documentation (a position we would dispute), trial of specific damage issues could have gone on
23 for months.

24 21. In addition, during the course of this litigation AT&T claimed that there had been
25 either no or *de minimis* damage to the members of the Class based on the fact there was either no
26 or no material misrepresentation, and that any recovery would be substantially less than what was
27 ultimately recovered for the Class based on the need to show reliance or materiality. This crucial
28 element at trial therefore might be reduced to a battle of the experts based on some form of

1 consumer survey, with no guaranteed outcome. This settlement is superior to another possible
2 result -- little or no recovery for the Class members, or a recovery not paid for several years.

3 22. I believe that the risks detailed above would not have prevented the Class from
4 obtaining any recovery. However, it would be imprudent to ignore the potential ramifications of
5 some or all of these risks in determining the likelihood of establishing liability and damages and
6 assessing those risks against the recovery ultimately obtained. In light of these possibilities and
7 risks, the settlement obtained for the Class that eliminates all of these risks and delay for a
8 significant percentage of their out of pocket losses with little effort required is a reasonable
9 compromise of such claims.

10 23. The multiplicity of the parties also added to the complexity of these actions. The
11 Class includes over 294,000 Class members, located nationwide. The nature of this action and
12 the difficulty of trying complex cases generally and this case specifically supports the
13 reasonableness of this settlement.

14 24. The expertise and experience of plaintiffs' counsel and their views is another
15 important factor to consider in assessing the reasonableness of this settlement. As indicated in
16 the firm biographies attached to my Declaration as Exhibit "1", plaintiffs' counsel who worked
17 on this action are experienced practitioners in both the complex litigation and class action fields.
18 Defendants' counsel also are experienced in class action litigation, and have represented AT&T
19 nationwide. Counsel for both plaintiffs and AT&T agree that the settlement achieved is fair,
20 adequate, reasonable and should be approved by this Court.

21 25. To date, my firm has incurred \$191,678.50 in lodestar time (detailed below), and
22 \$11,106.74 in litigation expenses, consisting primarily of copying and facsimile costs, mediator
23 fees, and consultant fees and costs (the detail for which can be provided to the Court upon
24 request if it desires to review this information). All of the time expended was contingent. These
25 amounts were generated from a compilation generated by my firm's accounting records, which
26 records are created based on either attorney time sheets or expense reports, bills or requests
27 prepared by attorneys or staff in my office for expense reimbursement at or about the time such
28 expenses are incurred or the tasks are completed. Such records are maintained by my office

1 manager using standard TimeSlips billing and accounting software and are compiled during the
2 regular course of my firm's business, and thus are an accurate business record of my firm's
3 business operations.

4 26. Over the past several years my firm has made numerous fee applications in state
5 courts throughout California for reimbursement of the time expended by the attorneys in this
6 firm, based on the hourly rates for each attorney reflected in the accompanying time records.
7 These hourly rates vary between \$150 an hour and \$450 an hour, depending on the experience
8 level of the attorneys. My firm's billing rates have been consistently approved as reasonable
9 commercial market rates, based on rates other counsel in California with similar experience
10 charge for similar services, and are the same rates charged to our non-contingent clients

11 27. The following is a summary by attorney of the hours each attorney in my firm
12 who worked on this matter has expended in this action, as taken from my firm's time records:

13	Hallen D. Rosner (\$350/hour)	32.25 hours
14	Alan M. Mansfield (\$450/hour)	341.25 hours
15	Jennifer Daniel-Duckering (\$250/hour)	51.8 hours
16	John Hanson (\$270/hour)	49.55 hours

17 The qualifications of each of these attorneys is set forth in our firm biography, a
18 true and correct copy of which is attached hereto as Ex. "1". The number of hours my firm has
19 expended in this litigation to date totals 474.85 hours. All of the litigation efforts expended by
20 these counsel were required during the course of this litigation. Based on the factors of risk,
21 delay and exceptional result as detailed above, the resulting multiplier of 2.5 shows that the fees
22 to be paid as part of this class action settlement are reasonable, as they fall within the standard
23 multiplier range of between 2 and 4, as discussed in numerous California appellate court
24 decisions. This amount is also a reasonable – indeed low – percentage of the overall value of the
25 settlement as set forth above.

26 28. In the settlement we also provided for an additional payment of \$2,000 to the class
27 representatives for their additional 30 hours and effort expended in investigating the case and
28 acting as the class representatives. Mr. and Mrs. Frey spent extensive time trying to resolve this

1 issue informally, responding to discovery, and reviewing the settlement terms, and also in
2 conducting their own investigation as to the legality of the FCLC fees.

3 29. In addition to the extensive notice by publication, according to the Declaration of
4 Frank Catanzano of AT&T, individual notice was mailed to over 294,000 Class members during
5 the week of April 17, 2006. Both AT&T and my firm have received numerous telephone calls
6 from Class members asking about the terms of the settlement and how to complete the claim
7 form. No Class member has objected to the settlement at this point, and I have only received one
8 request for exclusion. The small number of exclusion requests, combined with the lack of any
9 objections at this point, also weighs in favor of approving this settlement. I will update the Court
10 on these figures when I submit our reply after the deadline for objections and exclusions has
11 passed, since AT&T has just completed the notice program.

12 I declare under penalty of perjury under the laws of the State of California that the
13 foregoing is true and correct based on my personal knowledge.

14 Executed this 1st day of May, 2006 at San Diego, California.

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16 _____
17 ALAN M. MANSFIELD
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