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Superior Court of California
County of Los Angeles

MAY 18 2022

Sherri R. Carls, Clerk
Alfredo Morales deputy
ALFREDO MORALES

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**SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES**

RONALD CHINITZ, STEVIE HEMPHILL,
and LINDA GOMEZ, individually and on
behalf of all others similarly situated,

Plaintiffs,

v.

TELECOM EVOLUTIONS, LLC, a
California limited liability company, and
QUALITY SPEAKS LLC, a California
limited liability company,

Defendants.

Case No.: 18STCV08068

**ORDER GRANTING
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT ON CONDITIONS**

Date: May 18, 2022
Dept.: SSC-7
Time: 11:00 a.m.

I. BACKGROUND

Plaintiffs Stevie Hemphill and Linda Gomez sue Defendants Telecom
Evolutions, LLC and Quality Speaks, LLC (collectively, "Defendants") in regard to
Defendants' marketing and advertising of their internet service. Defendants are

1 telecommunications providers. Plaintiffs allege that Defendants made false,
2 misleading, and deceptive representations in regard to their “fiber optic” TrueStream
3 internet service, when it was allegedly provided via copper DSL lines instead.

4 Former named plaintiff Ronald Chinitz initiated this action on December 12,
5 2018, bringing claims on behalf of a putative California state class for violation of the
6 CLRA, California’s False Advertising Law, Cal. Bus. & Prof. Code § 17500 et seq.
7 (“FAL”), and California’s Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 et
8 seq. (“UCL”), for intentional misrepresentation, and for unjust enrichment.

9 On September 16, 2019, the Parties attended a full day mediation before
10 Honorable Jonathan Cannon (Ret.) of JAMS, which did not result in settlement. On
11 November 25, 2019, the Parties attended a second full day mediation with Judge
12 Cannon, which also did not result in settlement. After several more months of
13 negotiations, on February 8, 2021, the Parties reached resolution on the material points
14 of a settlement, memorialized in a non-binding Memorandum of Understanding.

15 According to Class Counsel, on March 17, 2021, Mr. Chinitz attempted to
16 negotiate a class settlement with Defendants. On March 31, 2021, Defendants served a
17 Motion for Preliminary Approval, which Plaintiff opposed. On April 20, 2021, Class
18 Counsel moved to be relieved as Mr. Chinitz’s counsel and to substitute Mr. Hemphill
19 and Ms. Gomez as the named Plaintiffs. On May 12, 2021, the Court granted Plaintiffs’
20 motions and vacated the hearing on the Motion of Preliminary Approval.

21 On August 20, 2021, Plaintiffs filed the Corrected Amended Class Action
22 Complaint. On September 22, 2021, Mr. Chinitz requested to dismiss his individual
23 claims against Defendants, which the Court granted.

24 Thereafter, the Parties entered a third round of settlement negotiations, which
25 culminated in the long-form *Settlement Agreement and Release* (“Settlement

1 Agreement”), which the Parties, Class Counsel, and Defendants’ Counsel executed on
2 October 29, 2021. A fully executed copy of the agreement was filed with the Court.

3 On March 7, 2022, the Court issued a “checklist” to the parties pertaining to
4 deficiencies in the proposed settlement. In response, the parties filed further briefing,
5 including the Amended Settlement Agreement attached to the Supplemental
6 Declaration of George V. Granade (“Granade Decl.”) as Exhibit 1.

7 Now before the Court is Plaintiffs’ motion for preliminary approval of the
8 settlement. For the reasons set forth below, the Court grants preliminary approval of
9 the settlement.

10
11 **II. THE TERMS OF THE SETTLEMENT**

12 **A. SETTLEMENT CLASS AND RELATED DEFINITIONS**

13 “Class” or “Settlement Class” means and is comprised of all persons in the
14 U.S. who meet all of the following criteria:

- 15 1. Who subscribed to “DSL Extreme” TrueStream Service offered by Telecom
16 Evolutions, Quality Speaks, or IKANO Communications in any of the following
17 packages (only): 768 kbps, 1.5 mb, 3.0 mb, and 6.0 mb;
- 18 2. Who, at the time of service, were eligible for an “ADSL1” package in that they:
19 1) lived in an area serviced by the “ADSL1” and 2) maintained a standard
20 copper-based phone line with AT&T concurrent with each month their
21 TrueStream service was purchased through Defendants;
- 22 3. Who, at the time of service, resided within and had a phone line with one of the
23 following area codes: 213; 310; 323; 408; 415; 424; 442; 510; 562; 619; 626;
24 628; 650; 657; 661; 669; 707; 714; 747; 805; 818; 831; 858; 909; 925; 949; or
25 951;

- 1 4. Whose subscription began no earlier than March 1, 2015, and no later than July
2 14, 2017; and
3 5. Who do not opt out.

4 Excluded from the class are (a) Defendants, Defendants' board members,
5 executive-level officers, and attorneys, and immediately family members of any of the
6 foregoing persons; (b) governmental entities; (c) the court, the court's immediate
7 family, and the court staff; and (d) any person that timely and properly excludes himself
8 or herself from the class in accordance with court-approved procedures. (§§III.D)

9 **“Class Period”** means the period from March 1, 2015 to the date of Preliminary
10 Approval. (§§III.K)

11 **“Class Member” or “Settlement Class Member”** means any individual who is
12 a member of the Settlement Class who does not timely Opt Out. (§§III.G)

13 14 **B. THE MONETARY TERMS OF SETTLEMENT**

15 The essential monetary terms are as follows:

- 16 • **Monetary Relief:** Each class member who does not opt out and who submits a
17 timely claim form will be entitled to a submit a claim for a cash payment
18 consisting of the difference between what the class member paid Defendants for
19 TruStream service for the period of active service and the amount the class
20 member would have paid during that same period had he or she elected the
21 comparable ADSL1 package rather than the TrueStream package. For those
22 Class Members who ordered the TrueStream 768 kbps package, \$5.00 per month
23 for each month they had active service, until the Preliminary Approval date. For
24 those Class Members who ordered the TrueStream 1.5 mb package, \$8.00 per
25 month for each month they had active service, until the Preliminary Approval

1 date. For those Class Members who ordered the TrueStream 3.0 mb package,
2 \$13.00 per month for each month they had active service, until the Preliminary
3 Approval date. For those Class Members who ordered the TrueStream 6.0 mb
4 package, \$13.00 per month for each month they had active service, until the
5 Preliminary Approval date. (§I.B.1)

- 6 ○ Plaintiffs' counsel asserts that because there is no cap on the amount that
7 Settlement Class Members may recover (meaning that Defendants will be
8 liable for any and all valid and timely Claim Forms submitted by
9 Settlement Class Members), it is difficult to provide a definite value on
10 the Settlement recovery, but they estimate that substantially more than
11 \$1.7 million is potentially available for Class Members to claim. (Supp.
12 Brief at pp. 6-8, 13:6-9.)

13 ● Other Payments:

- 14 ○ Up to **\$300,000** for attorneys' fees and costs (§IV.C.1); and
- 15 ○ Up to **\$3,000 total [\$1,500 each]** for service awards to the proposed class
16 representatives (*Ibid.*).
 - 17 ■ Defendants will pay, or cause to be paid, by wire transfer, to the
18 Settlement Administrator, Class Counsel Fees and Class
19 Representative Service Awards in the amount of up to \$303,000.00
20 (or any lesser amount awarded by the Court and accepted by Class
21 Counsel and Class Representatives) into an account established by
22 the Settlement Administrator, within two hundred seventy (270)
23 calendar days after the Effective Date. (§IV.C.2)

1 ○ Costs and fees of the Settlement Administrator associated with the
2 administration of the settlement by the Settlement Administrator shall be
3 paid, or cause to be paid, by Defendants. (§IV.B.5)

4 ● Claims Requirement: Class Members are entitled to receive a payment upon full
5 and timely completion of a proper and valid Claim Form. (§IV.B.1.a)

6 ○ Settlement Payment Calculations: Each Class Member who does not opt
7 out and who submits a timely Claim Form will be entitled to a cash
8 payment consisting of the difference between (i) what the Class Member
9 paid Defendants for TrueStream service during the period of active
10 service of said Class Member, until the earlier of the date of Preliminary
11 Approval or the date when the Class Member ended their active service,
12 and (ii) the amount the Class Member would have paid during that same
13 period had he or she elected the comparable ADSL1 package rather than
14 the TrueStream package. Payments shall be calculated by and be
15 distributed by the Settlement Administrator as follows: (§IV.B.1.b)

- 16 ▪ For those Class Members who ordered the TrueStream 768
17 package, this amounts to \$5.00 per month. (§IV.B.1.b.i)
- 18 ▪ For those Class Members who ordered the TrueStream 1.5
19 package, this amounts to \$8.00 per month. (§IV.B.1.b.ii)
- 20 ▪ For those Class Members who ordered the TrueStream 3.0
21 package, this amounts to \$13.00 per month. (§IV.B.1.b.iii)
- 22 ▪ For those Class Members who ordered the TrueStream 6.0
23 package, this amounts to \$13.00 per month. (§IV.B.1.b.iv)
- 24 ▪ Tax Allocation: 100% non-wages. (§IV.B.4)

1 ○ Claim Form Availability: The Claim Form shall be in a substantially
2 similar form to that attached as Exhibit A. The Claim Form will be: (i)
3 included on the Settlement Website to be designed and administered by
4 the Settlement Administrator; (ii) made readily available from the
5 Settlement Administrator, including to anyone requesting a Claim Form
6 from the Settlement Administrator by mail, e-mail, or calling a toll-free
7 number provided by the Settlement Administrator; and (iii) made readily
8 available via a hyperlink that will be emailed to Class Members for whom
9 Defendants has, and/or the Administrator finds, an email address.

10 (¶IV.B.2.b)

11 ○ Timely Claim Forms: Class Members must submit a timely Claim Form.
12 To be timely, the Claim Form must be postmarked or submitted online
13 before or on the last day of the Claim Period, the specific date of which
14 will be displayed on the Claim Form and Class Notice as set forth on the
15 Exhibits A and B. For a Claim Form submitted by mail, the Claim Form
16 will be deemed to have been submitted on the date of the postmark on the
17 envelope or mailer. For an electronically submitted Claim Form, the
18 Claim Form will be deemed to have been submitted on the date it is
19 received by the Settlement Administrator or three days after being
20 submitted by the Settlement Class Member, whichever is shorter.

21 (¶IV.B.2.c)

- 22 ▪ “Claim Period” means the time period during which Class
23 Members may submit a Claim Form to the Settlement
24 Administrator for review. The Claim Period shall run for a period
25 of one-hundred and eighty (180) calendar days from the date of the

1 first publication of the Class Notice, including in online form or
2 otherwise, unless otherwise ordered by the Court. (§III.B)

3 ○ Validity of Claim Forms: Class Members must submit a valid Claim
4 Form, which must contain the Class Member's legal first and last name
5 and email address or mailing address, the TrueStream package the Class
6 Member received (i.e. 768kbps, 1.5mb, 3.0 mb, or 6.0 mb), and an
7 attestation that they maintained a standard copper-based phone line with
8 AT&T concurrent with each month their TrueStream service was
9 purchased through Defendants. Claim Forms that do not meet the
10 requirements set forth in this Agreement and in the Claim Form
11 instructions may be rejected. The Settlement Administrator will have the
12 sole discretion to determine a Claim Form's validity. (§IV.B.2.d)

13 ○ Estimated Claims Rate: The administrator estimates a 13% response rate
14 from the class, based on prior settlement administrations they conducted.
15 However, the administrator expects that the actual response rate will vary
16 substantially based on the size of the class. (See Decl. of James Prutsman,
17 attached as Exhibit 6 to Supp. Granade Decl.)

18 ● Funding and Distribution of Settlement Payments: Defendants will pay, or cause
19 to be paid, by wire transfer, to the Settlement Administrator, funds sufficient to
20 cover the payment of all checks to all Settlement Class Members, into an
21 account established by the Settlement Administrator ("Settlement Fund"), within
22 ten (10) calendar days after the Effective Date. (§IV.B.3.a)

23 ○ Payments will be distributed in the form of a check to each qualifying
24 Settlement Class Member who did not validly and timely opt out of the
25 Settlement Class. (§IV.B.3.b)

1 ○ The Settlement Administrator shall begin making payments to Class
2 Members who submit timely, valid, and approved Claims via first-class
3 mail or electronic transfer no later than thirty (30) calendar days after the
4 Effective Date. (§IV.B.3.c)

5 ○ The Settlement Administrator shall have completed sending the payment
6 to Class Members who have submitted timely, valid, and approved
7 Claims no later than ninety (90) calendar days after the Effective Date.
8 (§IV.B.3.d)

9 ● Unclaimed Funds: Class Members shall have one hundred and eighty (180) days
10 from the date on which checks are mailed to negotiate their checks. Checks not
11 negotiated within this one hundred and eighty (180) day period will expire on the
12 first day after the period ends. (§IV.B.3.e)

13 ○ It is the Parties' intent to distribute the entirety of the Settlement Fund to
14 Settlement Class Members. If, after distributing the funds from the
15 Settlement Fund in accordance with Section IV.B, any cash remains in the
16 Settlement Fund from uncashed checks, the funds will be distributed to
17 National Consumer Law Center as a cy pres recipient as detailed in
18 Section IV.B.3.g–h. Under no circumstances shall any cash remaining in
19 the Settlement Fund revert or otherwise be returned to Defendants.
20 (§IV.B.3.f.iii)

21 ● Nonmonetary Relief: Starting in June 2017, Defendants stopped offering the old
22 DSL network. § IV.A.1. Starting in September 2020, Defendants stopped
23 referring to TrueStream as “fiber optic.” Defendants have agreed to refrain from
24 referring to TrueStream as “fiber optic” unless they can ensure that TrueStream
25

1 customers are connected via fiber optic cable between the central office and their
2 home. (§I.B.3)

3 4 **C. TERMS OF RELEASES**

- 5 • Class Members' Releases and Waivers of Claims: Two hundred seventy (270)
6 calendar days after the Effective Date, for the Class Members' benefit and for
7 other good and valuable consideration under terms of this Settlement, the receipt
8 and sufficiency of which is hereby acknowledged, all Class Members (including
9 the Class Representatives), and each of their respective present, former, and
10 future spouses, heirs, executors, trustees, guardians, wards, administrators,
11 representatives, agents, attorneys, partners, successors, predecessors, assigns,
12 affiliates, parents, subsidiaries, corporate family members, officers, directors,
13 employees, members, member entities, shareholders, principals, vendors, and
14 insurers, individually, jointly, and severally, and all those acting or purporting to
15 act on their behalf, shall be deemed to fully and forever release, waive, acquit,
16 and discharge Defendants, its insurers, its present, former, and future successors,
17 assigns, affiliates, lenders, equity owners, investors, parents, subsidiaries, and
18 corporate family members, and each of their respective officers, directors,
19 partners, employees, agents, heirs, administrators, executors, members, member
20 entities, shareholders, predecessors, successors, assigns, transferees,
21 representatives, trustees, principals, vendors, attorneys, lenders, equity owners,
22 and investors, individually, jointly, and severally (collectively, "Released
23 Parties") from any and all claims, demands, damages, accounts, debts, liens,
24 suits, actions, and rights or causes of action of every kind and description,
25 whether known or unknown, suspected or unsuspected, that the Settlement Class

1 now has or has had, or hereafter can, shall, or may have for or by reason of any
2 matter, event, thing, act, transaction, or occurrence whatsoever arising out of or
3 relating directly or indirectly in any manner whatsoever to the facts alleged or
4 asserted in the Action including any and all claims of improper or false
5 advertising, unfair business practices, misrepresentation, fraud, or unjust
6 enrichment, and any and all claims under any federal or state law, statute, or
7 regulation including but not limited to California's Unfair Business Practices
8 law, and any parallel or similar state, local, or common law claims, from March
9 1, 2015, to the Preliminary Approval date ("Released Claims"). It is expressly
10 intended and understood by the Parties that this Agreement is to be construed as
11 a complete settlement, accord, and satisfaction of the Class Members' Released
12 Claims, and all of the Released Claims shall be dismissed with prejudice, even if
13 the Class Members never received actual notice of the Settlement prior to the
14 Final Approval Hearing. The terms of said release as set forth above shall be set
15 forth in the Court's Final Approval Order. (§VII.A)

- 16 • The releases are effective two hundred seventy (270) calendar days after the
17 Effective Date. (§VII.A)

18 19 **D. SETTLEMENT ADMINISTRATION**

- 20 • The proposed Settlement Administrator is Kroll LLC. (§III.Y)
- 21 • Costs and fees of the Settlement Administrator associated with the
22 administration of the settlement by the Settlement Administrator are not
23 provided. However, they shall be paid by Defendants. (§IV.B.5)
- 24 • Notice: The manner of giving notice is described below.

- 1 • Response Deadline: Class Members will have until thirty (30) calendar days
2 before the Final Approval Hearing to postmark any requests for exclusion
3 (§VI.A.2.b) or written objections (§VI.B.3).
 - 4 ○ If more than ten percent (10%) of the total number of people who
5 otherwise would qualify as a Settlement Class Member validly, timely,
6 and individually opt out of the Settlement, then Defendants may in its sole
7 discretion void and walk away from the Settlement. (§VI.A.4)
- 8 • A copy of the Final Judgment will be posted on the Settlement Administrator’s
9 website. (§III.Z)

10 **III. SETTLEMENT STANDARDS AND PROCEDURE**

11
12 California Rules of Court, rule 3.769(a) provides: “A settlement or compromise
13 of an entire class action, or of a cause of action in a class action, or as to a party,
14 requires the approval of the court after hearing.” “Any party to a settlement agreement
15 may serve and file a written notice of motion for preliminary approval of the settlement.
16 The settlement agreement and proposed notice to class members must be filed with the
17 motion, and the proposed order must be lodged with the motion.” See Cal. Rules of
18 Court, rule 3.769(c).

19 “In a class action lawsuit, the court undertakes the responsibility to assess
20 fairness in order to prevent fraud, collusion or unfairness to the class, the settlement or
21 dismissal of a class action. The purpose of the requirement [of court review] is the
22 protection of those class members, including the named plaintiffs, whose rights may not
23 have been given due regard by the negotiating parties.” *Consumer Advocacy Group,*
24 *Inc. v. Kintetsu Enterprises of America* (2006) 141 Cal. App.4th 46, 60 [internal
25 quotation marks omitted]; *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224,

1 245, disapproved on another ground in *Hernandez v. Restoration Hardware, Inc.* (2018)
2 4 Cal. 5th 260 (“*Wershba*”), [Court needs to “scrutinize the proposed settlement
3 agreement to the extent necessary to reach a reasoned judgment that the agreement is
4 not the product of fraud or overreaching by, or collusion between, the negotiating
5 parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all
6 concerned.”] [internal quotation marks omitted].

7 “The burden is on the proponent of the settlement to show that it is fair and
8 reasonable. However, “a presumption of fairness exists where: (1) the settlement is
9 reached through arm's-length bargaining; (2) investigation and discovery are sufficient
10 to allow counsel and the court to act intelligently; (3) counsel is experienced in similar
11 litigation; and (4) the percentage of objectors is small.” *Wershba*, 91 Cal. App. 4th at
12 245 [citing *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802].

13 Notwithstanding an initial presumption of fairness, “the court should not give
14 rubber-stamp approval.” *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th
15 116, 130 (“*Kullar*”). “[W]hen class certification is deferred to the settlement stage, a
16 more careful scrutiny of the fairness of the settlement is required.” *Carter v. City of*
17 *Los Angeles* (2014) 224 Cal.App.4th 808, 819. “To protect the interests of absent class
18 members, the court must independently and objectively analyze the evidence and
19 circumstances before it in order to determine whether the settlement is in the best
20 interests of those whose claims will be extinguished.” *Kullar*, 168 Cal. App. 4th at 130.
21 In that determination, the court should consider factors such as “the strength of
22 plaintiffs' case, the risk, expense, complexity and likely duration of further litigation,
23 the risk of maintaining class action status through trial, the amount offered in
24 settlement, the extent of discovery completed and stage of the proceedings, the
25 experience and views of counsel, the presence of a governmental participant, and the

1 reaction of the class members to the proposed settlement.” *Id.* at 128. “Th[is] list of
2 factors is not exclusive and the court is free to engage in a balancing and weighing of
3 factors depending on the circumstances of each case.” *Wershba*, 91 Cal. App. 4th at
4 245.

5 At the same time, “[a] settlement need not obtain 100 percent of the damages
6 sought in order to be fair and reasonable. Compromise is inherent and necessary in the
7 settlement process. Thus, even if ‘the relief afforded by the proposed settlement is
8 substantially narrower than it would be if the suits were to be successfully litigated,’
9 this is no bar to a class settlement because ‘the public interest may indeed be served by
10 a voluntary settlement in which each side gives ground in the interest of avoiding
11 litigation.’” *Id.* at 250.

12

13 **IV. ANALYSIS OF SETTLEMENT AGREEMENT**

14

15 **A. THERE IS A PRESUMPTION OF FAIRNESS**

16 The settlement is entitled to a presumption of fairness for the following reasons:

17

18 **1. The settlement was reached through arm’s-length bargaining**

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20 On September 16, 2019, the Parties attended a full day mediation before
21 Honorable Jonathan Cannon (Ret.) of JAMS, which did not result in settlement. On
22 November 25, 2019, the Parties attended a second full day mediation with Judge
23 Cannon, which also did not result in settlement. After several more months of
24 negotiations, on February 8, 2021, the Parties reached resolution on the material points
25 of a settlement, memorialized in a non-binding Memorandum of Understanding.

25

1 After former plaintiff Chinitz requested to dismiss his individual claims against
2 Defendants, the Parties entered a third round of settlement negotiations, which
3 culminated in the long-form Settlement Agreement that the Parties, Class Counsel, and
4 Defendants' Counsel executed on October 29, 2021. (Granade Decl. ¶¶ 13-35.)

5 6 **2. The investigation and discovery were sufficient**

7 Counsel represents that their pre-suit investigation included, but was not limited
8 to: obtaining and reviewing Defendants' marketing (including electronic marketing via
9 Defendants' website) of the TrueStream internet service, including the claim that
10 TrueStream service was "fiber optic"; conducting research regarding the characteristics
11 and delivery mechanisms of various types of internet service, including DSL service
12 and fiber optic service; obtaining and reviewing relevant legal precedent regarding
13 similar false and misleading representations; obtaining and reviewing relevant financial
14 information regarding the TrueStream service, including pricing for various TrueStream
15 packages and approximate sales figures; legal research to evaluate the prospective
16 merits and weaknesses of the case; and analysis of potential class-wide damages.
17 (Supp. Chinitz Decl. ¶9.)

18 Plaintiffs also served formal discovery requests on Defendants, which
19 Defendants provided responses to. The discovery included multiple sets of requests for
20 admission, requests for production of documents, form interrogatories, and special
21 interrogatories on each Defendant. (*Id.* at ¶¶ 11-19.) On September 21, 2020, Belaire-
22 West notice was sent to 400 randomly selected putative class members, though because
23 parties stayed the action pending settlement negotiations, the technical data on the 100
24 putative class members was never provided. (*Id.* at ¶¶ 20-21.)

25 This is sufficient to value the case for settlement purposes.

1
2 **3. Counsel is experienced in similar litigation**

3 Class Counsel represent that are experienced in class action litigation. (*Id.* at ¶¶
4 39-42, Exhs. 4-5.)

5
6 **4. Percentage of the class objecting**

7 This cannot be determined until the final fairness hearing. Weil & Brown et al.,
8 Cal. Prac. Guide: Civ. Pro. Before Trial (The Rutter Group 2019) ¶ 14:139.18 [“Should
9 the court receive objections to the proposed settlement, it will consider and either sustain
10 or overrule them at the fairness hearing.”].

11
12 **B. THE SETTLEMENT MAY PRELIMINARILY BE CONSIDERED FAIR,**
13 **ADEQUATE, AND REASONABLE**

14 Notwithstanding a presumption of fairness, the settlement must be evaluated in its
15 entirety. The evaluation of any settlement requires factoring unknowns. “As the court
16 does when it approves a settlement as in good faith under Code of Civil Procedure
17 section 877.6, the court must at least satisfy itself that the class settlement is within the
18 ‘ballpark’ of reasonableness. See *Tech-Bilt, Inc. v. Woodward-Clyde & Associates* (1985)
19 38 Cal.3d 488, 499–500. While the court is not to try the case, it is ‘called upon to
20 consider and weigh the nature of the claim, the possible defenses, the situation of the
21 parties, and *the exercise of business judgment* in determining whether the proposed
22 settlement is reasonable.’ (*City of Detroit v. Grinnell Corporation, supra*, 495 F.2d at p.
23 462, italics added.)” *Kullar*, 168 Cal.App.4th at 133 (emphasis in original).

24 //

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1 **1. Amount Offered in Settlement**

2 The most important factor is the strength of the case for plaintiffs on the merits,
3 balanced against the amount offered in settlement.” *Id.* at 130.

4 Class Counsel estimated Defendant’s maximum exposure at approximately
5 **\$1,700,000**, based on the sales information provided by Defendants in discovery. Class
6 Counsel reviewed an Excel spreadsheet that Defendants provided in discovery which
7 showed Defendants’ customers’ TrueStream subscriptions of various types (including the
8 services covered in the Settlement, i.e., 768 kbps, 1.5 mb, 3.0 mb, and 6.0 mb)
9 aggregated on a monthly basis, where the internet service was provided through third
10 party AT&T.

11 The spreadsheet shows that during the period from March 1, 2015 to July 14,
12 2017, TrueStream subscribers purchased approximately 16,000 months of subscriptions
13 to the 768 kbps TrueStream package, 20,000 months of subscriptions to the 1.5 mb
14 TrueStream package, 43,200 months of subscriptions to the 3.0 mb TrueStream package,
15 and 71,400 months of subscriptions to the 6.0 mb TrueStream package.

16 Under the Settlement, the monetary recoveries for Class Members who submit
17 valid claims are \$5 per month in case of the 768 kbps TrueStream service, \$8 per month
18 in the case of the 1.5 mb TrueStream service, \$13 per month in the case of the 3.0 mb
19 TrueStream service, and \$13 per month in the case of the 6.0 mb TrueStream service, for
20 each month they had active service until the Preliminary Approval date.

21 Multiplying the number of months within the Class Period for each service level
22 from the Excel sheet by the Settlement recovery amount for that service level, then
23 adding the four numbers together, shows the total available monetary recovery for the
24 Class as exceeding \$1.7 million (16,000 times \$5 (\$80,000) plus 20,000 times \$8
25

1 (\$160,000) plus 43,200 times \$13 (\$561,600) plus 71,400 times \$13 (\$928,200)). (Supp.
2 Brief at 6:17-8:18; see also Supp. Granade Decl. ¶¶ 24-25.)

3 4 **2. The Risks of Future Litigation**

5 The case is likely to be expensive and lengthy to try. Procedural hurdles (e.g.,
6 motion practice and appeals) are also likely to prolong the litigation as well as any
7 recovery by the class members. Even if a class is certified, there is always a risk of
8 decertification. *Weinstat v. Dentsply Intern., Inc.* (2010) 180 Cal.App.4th 1213, 1226
9 [“Our Supreme Court has recognized that trial courts should retain some flexibility in
10 conducting class actions, which means, under suitable circumstances, entertaining
11 successive motions on certification if the court subsequently discovers that the propriety
12 of a class action is not appropriate.”].) Further, the settlement was negotiated and
13 endorsed by Class Counsel who, as indicated above, are experienced in class action
14 litigation. Based upon their investigation and analysis, the attorneys representing
15 Plaintiff and the class are of the opinion that this settlement is fair, reasonable, and
16 adequate. (Granade Decl., ¶58.)

17 18 **3. The Court Requires Revisions to the Overly Broad Releases and** 19 **Clarification that the Court will not Dismiss Class Claims upon Final** 20 **Approval.**

21 The Court has reviewed the Releases to be given by the absent class members and
22 the named plaintiffs. The class releases, described above, are overly broad. The court
23 finds no basis for approving a release extending to claims “of every kind and description,
24 whether known **or unknown**, suspected **or unsuspected**, that the Settlement Class now
25 has or has had, or hereafter can, shall, or may have for or by reason of **any matter, event,**
thing, act, transaction, or occurrence whatsoever arising out of or relating directly

1 **or indirectly in any manner whatsoever** to the facts alleged or asserted in the Action
2” The Court also finds no basis for approving a release of claims under federal law.
3 As drafted, the release exceeds the scope of the claims made in Plaintiffs’ complaint. See
4 *Amaro v. Anaheim Arena Mgmt.* (2021) 69 Cal. App. 5th 521, 537.

5 The Court approves the settlement on condition the parties revise the release
6 language to limit the class release to claims “that the Settlement Class now has or has
7 had, or hereafter can, shall, or may have arising out of the March 1, 2015 to May 18,
8 2022 facts alleged in the Action including claims of improper or false advertising, unfair
9 business practices, misrepresentation, fraud, and/or unjust enrichment (‘Released
10 Claims’).” The Court finds that the named plaintiffs’ general releases are appropriate
11 given that each was represented by counsel in its negotiation.

12 If the Court grants final approval of the settlement, it will enter a judgment
13 enforcing the terms of the Settlement Agreement. The Court will not dismiss the class
14 claims. The Court grants preliminary approval on condition that the language referring to
15 a dismissal in second to last sentence of ¶ VII.A, and also ¶ III.Q and ¶ IX.B.2.f is
16 deleted.

17 **4. Conclusion**

18 Class Counsel obtained a gross settlement potentially valued as high as
19 approximately \$1,700,000. Given the uncertain outcomes, including the potential that the
20 class might not be certified, that liability is a contested issue, and that the full amount of
21 penalties would not necessarily be assessed even if the class is certified and liability
22 found, the settlement is within the “ballpark of reasonableness.”

23 **C. CONDITIONAL CLASS CERTIFICATION MAY BE GRANTED**

24
25

1 A detailed analysis of the elements required for class certification is not required,
2 but it is advisable to review each element when a class is being conditionally certified.
3 *Amchem Products, Inc. v. Winsor* (1997) 521 U.S. 591, 620, 622-627. The party
4 advocating class treatment must demonstrate the existence of an ascertainable and
5 sufficiently numerous class, a well-defined community of interest, and substantial
6 benefits from certification that render proceeding as a class superior to the alternatives.”
7 *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1021.

8 **1. The Proposed Class is Numerous**

9 There are “thousands” of potential Class Members. (MPA at 23:28-24:3.)
10 Numerosity is established. *Franchise Tax Bd. Limited Liability Corp. Tax Refund*
11 *Cases* (2018) 25 Cal.App.5th 369, 393: stating that the “*requirement that there be many*
12 *parties to a class action is liberally construed,*” and citing examples wherein classes of
13 as little as 10, *Bowles v. Superior Court* (1955) 44 Cal.2d 574, and 28, *Hebbard v.*
14 *Colgrove* (1972) 28 Cal.App.3d 1017, were upheld).

15 **2. The Proposed Class Is Ascertainable**

16 “A class is ascertainable, as would support certification under statute governing
17 class actions generally, when it is defined in terms of objective characteristics and
18 common transactional facts that make the ultimate identification of class members
19 possible when that identification becomes necessary.” *Noel v. Thrifty Payless, Inc.*
20 (2019) 7 Cal.5th 955, 961 (*Noel*).

21 The class is defined above. Class Members are ascertainable through
22 Defendant’s business records. (MPA at 23:16-23.)

23 **3. There Is a Community of Interest**

24 “The community of interest requirement involves three factors: ‘(1) predominant
25 common questions of law or fact; (2) class representatives with claims or defenses typical

1 of the class; and (3) class representatives who can adequately represent the class.”

2 *Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.

3 Counsel contends that the Class Members’ claims are based on uniform, prominent
4 representations during the period from March 1, 2015, to July 14, 2017, that TrueStream
5 service was “fiber optic,” which were capable of being seen by every Class Member.

6 Common issues include whether Defendants deceptively marketed TrueStream internet
7 service as “fiber optic” in violation of the CLRA, FAL, and UCL, engaged in intentional
8 misrepresentation, and was unjustly enriched as a result. (MPA at 24:15-25:6.)

9 Counsel further contends that Plaintiffs’ claims are typical of those of the proposed
10 Class Members because their claims pose the same questions of law and fact as those of
11 the Class Members and arise from the same “fiber optic” representations regarding
12 TrueStream internet service. (MPA at 25:7-14.)

13 Finally, each Plaintiff represents that they have no conflicts of interest with the
14 class. (Declaration of Stevie Hemphill ¶5; Declaration of Linda Gomez ¶5.) As
15 previously stated, Class Counsel have experience in class action litigation and have no
16 adverse interests.

17
18 **4. Substantial Benefits Exist**

19 Given the relatively small size of the individual claims, a class action is superior to
20 separate actions by the class members.

21
22 **D. THE PROPOSED NOTICE PLAN MEETS THE REQUIREMENTS
23 OF DUE PROCESS**

24 The purpose of notice is to provide due process to absent class members. A practical
25 approach is required, in which the circumstances of the case determine what forms of

1 notice will adequately address due process concerns. *Noel*, 7 Cal.5th at 982. California
2 Rules of Court, rule 3.766 (e) provides that in determining the manner of the notice, the
3 court must consider: (1) the interests of the class; (2) the type of relief requested; (3) the
4 stake of the individual class members; (4) the cost of notifying class members; (5) the
5 resources of the parties; (6) the possible prejudice to class members who do not receive
6 notice; and (7) the res judicata effect on class members.

7 **1. Method of class notice**

8 “Class List” means a list of all members of the Class, to be generated by
9 Defendants and provided by Defendants to the Settlement Administrator on a
10 confidential basis not more than ten (10) business days after the Court enters
11 Preliminary Approval. The Class List shall be provided in Excel format and include the
12 following information in a separate field for each of the Class Members, to the extent
13 contained within Defendants’ records: First Name, Middle Initial (if available), Last
14 Name, Street Address 1, Street Address 2 if applicable, City, State, Zip Code, Email
15 Address, and Telephone and Cellular Telephone Numbers. Defendants shall provide the
16 last known address for each of the Class Members. Upon request of the Settlement
17 Administrator, and within ten (10) business days of such request, Defendants shall
18 provide on a confidential basis other available requested information, if required to
19 identify or locate Class Members, including Date of Birth information. To the extent
20 necessary, the Parties shall work in good faith to provide the Settlement Administrator
21 all necessary information. (§III.F)

22 Notice will be provided to the Class Members directly, first via email and then if
23 necessary via mail, using the Class List. Where practicable, each Class Member will
24 receive notice at least once through either channel. (§IV.B.2)

1 Dissemination of the Class Notice shall commence within twenty (20) business
2 days following the Court’s Preliminary Approval of this Agreement and appointment of
3 the Settlement Administrator. (§V.B.3)

4 Notice will first be emailed to Class Members with a valid email address on the
5 Class List. (§V.B.4)

6 For all Class Members for whom the email notice was returned undeliverable or
7 for whom an email address was not available on the Class List, they will receive mailed
8 notice via a postcard. The reverse side of the postcard shall contain a Claim Form with
9 return postage. (§V.B.5)

10 Mailed Notice shall be mailed to each Class Member at their last known mailing
11 address as provided by Defendants, and as updated by the Settlement Administrator
12 using the U.S. Postal Service’s database of verifiable mailing addresses (the CASS
13 database), the National Change-of-Address database, and/or other databases readily
14 available to the Settlement Administrator. (§V.B.6) Where practicable, the Mailed
15 Notice will include an indication that it is a “Class Action Settlement Notice authorized
16 by the Court in *Hemphill v. Telecom Evolutions, LLC, et al.*, Los Angeles Superior
17 Court, Case No. 18STCV08068”, and may also include a bar code. (§V.B.7)

18 For all Mailed Notices returned to the Settlement Administrator undeliverable,
19 the Settlement Administrator will also use available databases as practicable to update
20 the addresses of members of the Settlement Class and will resend to such members who
21 can be located. (§V.B.8)

22 The Settlement Administrator will also have published a 1/4 page Short
23 Form Notice—or substantially similar—of the Settlement in the Los Angeles Edition of
24 USA Today for four consecutive weeks. (§V.B.9)

25 All Notice is to be completed within sixty (60) calendar days following

1 the Court's Preliminary Approval of this Agreement. (§V.B.10)

2 The Settlement Administrator shall also have the duty of establishing and
3 publishing the Settlement Website that contains the Class Notice and related
4 documents, including a Claim Form capable of being completed and submitted on-line.
5 (§V.C.3) "Settlement Website" means the website to be created by the Settlement
6 Administrator for this settlement at www.fiberopticsettlement.com that will include
7 information about the Action and the Settlement, relevant documents, and electronic
8 and printable forms relating to the Settlement, including the Long Form Notice, Short
9 Form Notice, and Claim Form. The Settlement Website shall be activated on the date of
10 the first publication of the Summary Settlement Notice or Class Notice, whichever is
11 earlier, and shall remain active for at least one hundred and twenty (120) calendar days
12 after the Court enters Final Approval. Subject to approval by the Court in accordance
13 with California Rule of Court 3.771(b), the order granting Final Approval will be
14 posted on the Settlement Website. (§III.Z)

15 **2. Content of class notice.**

16 A copy of the proposed class notice is attached to the Settlement Agreement as
17 Exhibit 1. The notice includes information such as: a summary of the litigation; the
18 nature of the settlement; the terms of the settlement agreement; the maximum deductions
19 to be made from the gross settlement amount (i.e., attorney fees and costs, the
20 enhancement award, and claims administration costs); the procedures and deadlines for
21 participating in, opting out of, or objecting to, the settlement; the consequences of
22 participating in, opting out of, or objecting to, the settlement; and the date, time, and
23 place of the final approval hearing. See Cal Rules of Court, rule 3.766(d).

24 Notice will be issued to the class in English only, as Defense counsel asserts that
25 the case does not warrant Spanish translation of the Notice because Defendants do not

1 advertise Spanish language support and do not seek to hire bi-lingual reps, as they rarely
2 get anyone who requests to speak in any language other than English. (See Decl. of A.
3 Louis Dorny, attached as Exhibit 7 to Supp. Granade Decl.)

4 **3. Settlement Administration Costs**

5 **Prior to the time of the final fairness hearing, the settlement administrator must**
6 **submit a declaration attesting to the total costs incurred and anticipated to be incurred to**
7 **finalize the settlement for approval by the Court.**

8 9 **E. ATTORNEY FEES AND COSTS**

10 California Rule of Court, rule 3.769(b) states: “Any agreement, express or
11 implied, that has been entered into with respect to the payment of attorney fees or the
12 submission of an application for the approval of attorney fees must be set forth in full in
13 any application for approval of the dismissal or settlement of an action that has been
14 certified as a class action.”

15 Ultimately, the award of attorney fees is made by the court at the fairness
16 hearing, using the lodestar method with a multiplier, if appropriate. *PLCM Group, Inc.*
17 *v. Drexler* (2000) 22 Cal.4th 1084, 1095-1096; *Ramos v. Countrywide Home Loans,*
18 *Inc.* (2000) 82 Cal.App.4th 615, 625-626; *Ketchum III v. Moses* (2000) 24 Cal.4th
19 1122, 1132-1136. In common fund cases, the court may use the percentage method. If
20 sufficient information is provided a cross-check against the lodestar may be conducted.
21 *Laffitte v. Robert Half International, Inc.* (2016) 1 Cal.5th 480, 503. Despite any
22 agreement by the parties to the contrary, “the court ha[s] an independent right and
23 responsibility to review the attorney fee provision of the settlement agreement and
24 award only so much as it determined reasonable.” *Garabedian v. Los Angeles Cellular*
25 *Telephone Company* (2004) 118 Cal.App.4th 123, 128.

1 The question of class counsel's entitlement to **\$300,000** in attorneys' fees and
2 costs will be addressed at the final fairness hearing when class counsel brings a noticed
3 motion for attorney fees. If a lodestar analysis is requested class counsel must provide
4 the court with current market tested hourly rate information and billing information so
5 that it can properly apply the lodestar method and must indicate what multiplier (if
6 applicable) is being sought. Class counsel should also be prepared to justify the costs
7 sought detailing how they were incurred.

8 Fee Split: \$200,000 to Reese LLP and \$100,000 to Halunen Law (¶IV.C.3).
9

10 **F. SERVICE AWARDS**

11 The Settlement Agreement provides for a service award of up to **\$1,500 each** for
12 the class representatives. Trial courts should not sanction enhancement awards of
13 thousands of dollars with "nothing more than *pro forma* claims as to 'countless' hours
14 expended, 'potential stigma' and 'potential risk.' Significantly more specificity, in the
15 form of quantification of time and effort expended on the litigation, and in the form of
16 reasoned explanation of financial or other risks incurred by the named plaintiffs, is
17 required in order for the trial court to conclude that an enhancement was 'necessary to
18 induce [the named plaintiff] to participate in the suit" *Clark v. American*
19 *Residential Services LLC* (2009) 175 Cal.App.4th 785, 806-807, italics and ellipsis in
20 original.

21 In connection with the final fairness hearing, named Plaintiffs must submit a
22 declaration attesting to why they should be compensated for the expense or risk they
23 have incurred in conferring a benefit on other members of the class. *Id.* at 806.

24 The Court will decide the issue of the enhancement award at the time of final
25 approval.

1
2 **V. CONCLUSION AND ORDER**

3 Provided the Parties revise the Settlement Agreement as noted above and file the
4 executed revised Settlement Agreement with a Declaration by May 24, 2022 attesting to
5 the parties' adoption of the revisions, the Court hereby:

6 (1) Grants preliminary approval of the settlement as fair, adequate, and
7 reasonable;

8 (2) Grants conditional class certification;

9 (3) Appoints Stevie Hemphill and Linda Gomez as Class Representatives;

10 (4) Appoints Reese LLP and Halunen Law as Class Counsel;

11 (5) Appoints Kroll Settlement Administration as Settlement Administrator;

12 (6) Approves the proposed notice plan; and

13 (7) Approves the proposed schedule of settlement proceedings as follows:

- 14 ● Preliminary approval hearing: May 18, 2022
 - 15 ● Deadline for Defendant to provide class list to settlement administrator: June 10,
16 2022 (10 business days after preliminary approval)
 - 17 ● Deadline for settlement administrator to mail notices: June 24, 2022 (20 business
18 days after Preliminary Approval Order is effective)
 - 19 ● Deadline for class members to opt out: December 21, 2022 (30 calendar days
20 before the Final Approval Hearing); Deadline for class members to object:
21 December 21, 2022 (30 calendar days before the Final Approval Hearing)
 - 22 ● Deadline for class counsel to file motion for final approval is 16 court days prior
23 to final fairness hearing);
 - 24 ● Final fairness hearing is set for January 20, 2023, at 11:00 a.m.
- 25

1 This Order shall be effective as of May 27, 2022 provided the parties have filed the
2 revised Settlement Agreement and Declaration described above.

3
4 Dated: May 18, 2022



AMY A. HOGUE

Hon. Amy Hogue

Judge of the Superior Court

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