



FILED
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)
- 25

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,

