**UNITED STATES DISTRICT COURT**
**DISTRICT OF NEW JERSEY**

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| BOBBIE JAMES, *et al.* on behalf of themselves and all others similarly situated,<br><br>Plaintiffs<br>v.<br><br>GLOBAL TEL*LINK CORPORATION, INMATE TELEPHONE SERVICE, and DSI-ITI LLC,<br>Defendants. | Civil Action No. 13-4989 (WJM)(MF) |

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**BRIEF IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF PROPOSED SETTLEMENT, APPROVAL OF THE PROPOSED NOTICE OF THE SETTLEMENT, AND APPOINTMENT OF SETTLEMENT ADMINISTRATOR**

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## PRELIMINARY STATEMENT

After seven long years of hard fought litigation, two trips to the Third Circuit, and days before trial, Plaintiffs and Defendants, Global Tel*Link Corporation, Inmate Telephone Service, and DSI-ITI LLC (together "GTL") have reached a settlement which will provide up to $25 million in combined cash and credits to Class members, inmates and their families and friends who used GTL's Inmate Calling Service ("ICS") for calls placed from New Jersey correctional facilities between 2006 and 2016. For the reasons set forth below, Plaintiffs the proposed settlement is fair, reasonable and adequate.

At this time, Plaintiffs request entry of the proposed Preliminary Approval Order which will begin the final approval process by, among other things:

- preliminarily approving the terms of the respective Settlement between Plaintiffs and GTL as set forth in the Settlement Agreement;
- approving the retention of Angeion Group, LLC ("Angeion") as Settlement Administrator;
- approving the form and content of the Notice, Claim Form and Summary Notice attached as Exhibits 1, 2, and 3 to the Preliminary Approval Order;
- finding the plan for disseminating the Notice and Claim Form and publishing the Summary Notice to constitute the best notice practicable under the circumstances and to satisfy the requirements of Rule 23, due process and all other applicable law and rules; and
- setting a schedule for (i) disseminating notice to the Class; (ii) requesting exclusion from the Class; (iii) objecting to the Settlement, or any part thereof; (vi) submitting Claim Forms in order to be eligible to participate in the Settlement; (v) submitting papers in support of final approval of the Settlement and related matters; (vi) submitting papers in support of Class Counsel's application for attorneys' fees, reimbursement of expenses and Case Contribution Awards to Plaintiffs; and the (vii) the Fairness Hearing.

As discussed herein, the Settlement easily satisfies the standards for preliminary approval. *See Block v. RBS Citizens, Nat'l Ass'n, Inc.*, 2016 WL 8201853, at *4 (D.N.J. Dec. 12, 2016) ("Preliminary approval is not binding, and it is granted unless a proposed settlement is

obviously deficient.").[1] Accordingly, the Settlement warrants the Court's preliminary approval and the Preliminary Approval Order should be entered.

## BACKGROUND OF THE ACTION AND SETTLEMENT AGREEMENT

### a) Procedural History of the Action

Plaintiffs filed this case over 7 years ago on August 20, 2013. The Complaint alleged that GTL, as the exclusive provider of ICS for New Jersey State prisons and most of the county jails in New Jersey, overcharged the users of its services, inmates and their families and friends, by charging excessive rates for placing telephone calls and excessive ancillary fees, including a 19% deposit fee, which was charged on deposits into a user's account with a credit card. The claims included violation of the New Jersey Consumer Fraud Act, violation of the disclosure regulations for prepaid calling services promulgated under the Consumer Fraud Act, violation of the New Jersey public utilities statutes, unjust enrichment, violation of the Federal Communications Act, and violation of the Takings clause of the Fifth Amendment.

On November 22, 2013, GTL moved to dismiss Plaintiffs' complaint under Fed.R.Civ.P. 12(b)(6) (Docket Entry 20). On September 8, 2014, the Court denied GTL's motion but stayed the action pending either a resolution of the reasonableness of GTL's charges by the FCC, voluntary dismissal of the Federal Communications Act claims, plaintiffs' failure to file an administrative complaint with the FCC after a decision by the D.C. Circuit of GTL's then-pending appeal of the FCC's ICS regulations, or good cause for lifting the stay. (Docket Entries 35 and 36) In light of the fact that complaints about the high rates and fees applicable to ICS had been pending before the FCC since 2003, Plaintiffs voluntarily dismissed their claims relating to violation of the Federal Communications Act and New Jersey public utilities act on

[1] Unless otherwise noted, all emphasis in quotations is added, and internal quotation marks, citations and footnotes are omitted.

October 20, 2014, and the Court lifted the stay imposed after its motion to dismiss decision.[2] (Docket Entry 41)

Thereafter, Plaintiffs sought to proceed with discovery (Docket Entries 45, 47, 50, 52, 53), but GTL contended that discovery should be bifurcated and there should be no discovery until the bifurcation issue was decided. (Docket Entries 48, 49, 52) Ultimately, on February 5, 2015, the Court denied GTL's request to bifurcate discovery. (Docket Entry 59) Thereafter, GTL raised an issue with the Discovery Confidentiality Order, which was resolved by the Court on May 1, 2015. (Docket Entries 62, 65, 68, 72, 73).

On May 6, 2015, GTL requested permission to file a motion for judgment on the pleadings, contending that Plaintiffs' Consumer Fraud claims were preempted because ICS was regulated by the Board of Public Utilities and the FCC. It also sought permission to compel individual arbitration. (Docket Entry 75) GTL also filed a motion before the Judicial Panel for Multidistrict Litigation to consolidate this case with other ICS cases that were then pending in the Western District of Arkansas and the Eastern District of Pennsylvania.[3] At the July 14, 2015

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[2] This ultimately proved to substantially advance the claims for Class members. On June 13, 2017, the D.C. Circuit vacated the FCC's ICS regulations, found that the FCC had no authority to regulate intrastate ICS rates and fees, and remanded the issues to the FCC for further consideration. *Global Tel*Link v. FCC*, 866 F.3d 397 (D.C. Cir. 2017). Proceedings are pending.

[3] GTL sought to consolidate all of the ICS litigation against it in the Eastern District of Pennsylvania, in light of the fact that the Western District of Arkansas was the only court that had *not* stayed the plaintiffs' Federal Communications Act claims. Plaintiffs here opposed consolidation of this matter with the other ICS cases, and the plaintiffs in the Pennsylvania case consented to transfer to Arkansas. By way of Order dated October 13, 2015, the JPML denied GTL's motion to consolidate and transfer. (JPML No. 2651, Docket Entry 23) The claims in the Arkansas case were ultimately dismissed on summary judgment, after the class was decertified. *See Mojica v. Securus Technologies, Inc.*, 2018 WL 3212037 (W.D. Ark. June 29, 2018). That decision was affirmed on April 15, 2020. *Stuart v. Global Tel*Link Corp.*, 956 F.3d 555 (8th Cir. 2020).

in-person conference, GTL was granted permission to file a motion to compel arbitration but was denied permission to file its proposed motion for judgment on the pleadings.

On August 7, 2015, GTL filed its motion to compel individual arbitration, which Plaintiffs opposed. (Docket Entries 95, 99, 100, 103). On February 16, 2016, the Court granted GTL's motion to compel individual arbitration as to Plaintiff Crystal Gibson, but denied the motion as to the other named plaintiffs. (Docket Entries 116, 117) On March 9, 2016, GTL appealed the denial of its motion to compel arbitration to the Third Circuit. On March 29, 2017, the Third Circuit affirmed, *James v. Global Tellink Corp.*, 852 F.3d 262 (3d Cir. 2017), but in the meantime, the case here was on hiatus.

On May 18, 2017, the Court entered a scheduling order setting certain deadlines for GTL and other dates for expert disclosures and discovery, and for Plaintiffs to file a motion for class certification. (Docket Entry 130) After the telephone conference with the Court on June 23, 2017, the Court entered a revised scheduling order on July 20, 2017 setting a schedule for expert discovery and Plaintiffs' motion for class certification. (Docket Entry 136) Thereafter, the parties exchanged their class certification papers in accordance with former Appendix N, and those papers were filed on February 27, 2018 (Docket Entries 147-154). While the motion for class certification was pending, GTL requested, and was granted, permission to file a motion for summary judgment. That motion was filed on March 27, 2018. (Docket Entries 158, 159, 164, 165, 173) On August 6, 2018, the Court granted Plaintiffs' motion for class certification and denied GTL's motion for summary judgment. (Docket Entries 179-182) On August 20, 2018, GTL filed a petition for permission to appeal the grant of class certification pursuant to Fed.R.Civ.P. 23(f). GTL's petition was denied by way of Order dated January 24, 2019, but, in the meantime, the case was again on hiatus in the District Court.

After the Third Circuit denied GTL's petition for leave to appeal, the Court referred the case to mediation with Hon. Stephen M. Orlofsky (ret.) (Docket Entry 189). In the meantime, Plaintiffs submitted a notice plan to the Class. (Docket Entries 188, 190, 192, 195, 197). The notice plan was approved by the Court by way of Order dated June 10, 2019 (Docket Entry 198), and notice was sent to the Class in due course. (*See* Docket Entry 199) On October 22, 2019, the Court set a trial date for March 9, 2020 (Docket Entry 202).

After a settlement conference on January 7, 2020, the Court scheduled a Final Pretrial Conference on February 20, 2020 (Docket Entry 207) It also granted GTL permission to file a motion for judgment on the pleadings and a motion to decertify the class (Docket Entry 206), which were filed on January 24, 2020. (Docket Entries 212-217) The Court held a Final Pretrial Conference on February 20, 2020. On March 2, 2020, the Court granted GTL's motion to dismiss Plaintiffs Fifth Amendment "Taking" claim, but otherwise denied GTL's dispositive motion. As part of that decision, the Court found that there were issues of fact as to the application of GTL's derivative immunity defense. (Docket Entry 244, 245) On March 3, 2020, the Court held an all-day settlement conference which led to this settlement.

**b) Negotiations Producing The Settlement**

As is noted above, the parties held a mediation with Judge Orlofsky in March 2019. While the mediation was unsuccessful, the parties continued a direct dialogue on settlement but made little substantive progress. On February 9, 2020, the parties held another mediation session, this time with Hon. Dennis M. Cavanaugh (ret.) While the parties' settlement numbers remained far apart, they were closer together than before. Prior to the March 3, 2020 settlement conference with the Court, the discussed settlement numbers. Those settlement numbers were close enough together that, with the Court's assistance, the parties were able to reach an agreement on the class relief at the March 3 settlement conference.

**c) The Material Terms Of The Proposed Settlement**

**1. Settlement Class**

The Settlement Class is the same as the Class that the Court previously certified:

> All persons of the United States who, between 2006 and 2016, were incarcerated in a New Jersey prison or correctional institution and who used the phone system provided by Defendants, or who established an AdvancePay account with Defendants in order to receive telephone calls from a person incarcerated in New Jersey, excluding Essex County prior to June 2010, or persons receiving calls from persons incarcerated in Essex County prior to June 2011.

Excluded from the Class are 1) any Class Members who timely and validly elect to be excluded from the Class in accordance with the Preliminary Approval Order (the "Opt-Outs"), 2) any Class Members who previously excluded themselves from the Class (1) and 2) together, the "Opt-Outs"); 3) any GTL customer who set up payment by direct bill; and 4) Defendants and their respective parents, subsidiaries, and affiliates.

**2. Settlement Amount**

The Settlement benefit is up to $25 million combined in cash and credits to class members. Counsel fees, expenses, and incentive awards will be paid by GTL in addition to the Settlement benefits. The Settlement benefits will be distributed based upon the amount each Class Member spent for calling time and the time period in which the calls were made, as follows:

i. For Calls made between January 1, 2006 and December 31, 2008, 20% of the total amount spent for calling time above $.05 per minute;

ii. For Calls made between January 1, 2009 and December 31, 2011, 15% of the total amount spent for calling time above $.05 per minute;

iii. For Calls made between January 1, 2012 and December 31, 2016 10% of the total amount spent for calling time above $.05 per minute.

These amounts reflect the fact that GTL's calling rates went down during the Class Period. Class members who are current GTL customers, whether AdvancePay customers or inmates, will

receive credits into their account without a claims process. Class members who are not currently GTL customers will need to submit a claims form under oath with information sufficient to verify their identity vis-à-vis GTL's customer records.

**3. Released Claims**

The proposed Settlement will release all claims against GTL by Class members relating to GTL's provision of ICS.

## LEGAL ARGUMENT

## PRELIMINARY APPROVAL FOR THE SETTLEMENT SHOULD BE GRANTED

The proposed Settlement with GTL is fair, reasonable, and adequate. For the reasons set forth below, preliminary approval for the proposed Settlement should be granted.

### a) The Settlement Meets The Criteria Necessary For This Court To Grant Preliminary Approval

Federal Rule of Civil Procedure 23(e) requires judicial approval for any compromise of claims brought on a class basis. It is well established in the Third Circuit that the settlement of class action litigation is favored and encouraged. *See Ehrheart v. Verizon Wireless*, 609 F.3d 590, 594-595 (3d Cir. 2010) ("Settlement Agreements are to be encouraged because they promote the amicable resolution of disputes and lighten the increasing load of litigation faced by the federal courts."); *In re Warfarin Sodium Antitrust Litig.*, 391 F.3d 516, 535 (3d Cir. 2004) ("There is an overriding public interest in settling class action litigation, and it should therefore be encouraged.").

Judicial review of a proposed class action settlement consists of a two-step process. First, the court grants preliminary approval to the settlement and provisionally certifies a settlement class. Second, after notice of the settlement is provided to the class and the court conducts a fairness hearing, the court may grant final approval of the settlement. Fed.R.Civ.P. 23(e)[4]. Preliminary approval requires that the parties proposing the settlement make a showing that the Court is likely able to:

(i) approve the proposal under Rule 23(e)(2); and

(ii) certify the class for purposes of judgment on the proposal.

Fed.R.Civ.P. 23(e)(1)(B).

[4] This standard follows Rule 23(e) as amended effective December 1, 2018.

Approval of the settlement requires that the Court find that the settlement is "fair reasonable and adequate after considering whether:

> (A) The class representatives and class counsel have adequately represented the class;
>
> (B) The proposal was negotiated at arm's length;
>
> (C) The relief provided for the class is adequate, taking into account:
>
> (i) the costs, risks, and delay of trial and appeal;
>
> (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;
>
> (iii) the terms of any proposed award of attorney's fees, including timing of payment; and
>
> (iv) any agreement required to be identified under Rule 23(e)(3)
>
> (D) the proposal treats class members equitably relative to each other."

Fed.R.Civ.P. 23(e)(2).

These factors appear to be a combination of the factors formerly considered under *Girsh v. Jepson*, 521 F.2d 153, 157 (3d Cir. 1975) and *In re Prudential Insurance Company America Sales Practice Litigation*, 148 F.3d 283, 323-24 (3d Cir. 1998), and are intended to focus the parties' and the Court's attention on a shorter list of factors relating to the propriety of a proposed class settlement.

> A lengthy list of factors can take on an independent life, potentially distracting attention from the central concerns that inform the settlement-review process. A circuit's list might include a dozen or more separately articulated factors. Some of these factors—perhaps many—may not be relevant to a particular case or settlement proposal. Those that are relevant may be more or less important to the particular case. Yet counsel and courts may feel it necessary to address every factor on a given circuit's list in every case. The sheer number of factors can distract both the court and the parties from the central concerns that bear on review under Rule 23(e)(2).
>
> This amendment therefore directs the parties to present the settlement to the court in terms of a shorter list of core concerns, by focusing on the primary

> procedural considerations and substantive qualities that should always matter to the decision on whether to approve the proposal.

Fed.R.Civ.P. 23, Advisory Committee Notes, 2018 Amendments, Subdivision (e)(2)

**1) The Settlement Occurred After Good Faith, Arm's-Length Negotiations Conducted By Well-Informed And Experienced Counsel**

The Settlement is the result of extensive arm's-length negotiations undertaken in good faith by counsel for the Parties. As noted above, the Parties' negotiations involved a number of in person meetings and the assistance of two private mediators and the Court..

Throughout every stage of their negotiations, the Parties weighed the strengths and weaknesses of the Class' claims and GTL's defenses, including consideration of, among other issues, liability and damages. The Settlement was reached on the eve of trial, after fact and expert discovery had been completed, and after extensive motion practice, directed both toward class certification and the merits of Plaintiffs' claims. *See In re Philips/Magnavox TV Litig.*, 2012 WL 1677244, at *11 (D.N.J. May 14, 2012) ("Where this negotiation process follows meaningful discovery, the maturity and correctness of the settlement become all the more apparent."). When the Settlement was reached, Plaintiffs and GTL were well-informed regarding their case against GTL, and the likelihood of recovery from GTL. As a result, Plaintiffs and Class Counsel had an adequate basis for assessing the strengths of the Class' claims and the risks of continued litigation against GTL when they entered into the Settlement.

Moreover, Class Counsel, firms with extensive experience in complex class actions, and consumer protection claims in particular, believe that the Settlement is in the best interests of the Class. Counsel's judgment is entitled to considerable weight. *See Varacallo v. Mass Mut. Life Ins. Co.*, 226 F.R.D. 207, 240 (D.N.J. 2005) ("Class Counsel's approval of the Settlement also weighs in favor of the Settlement's fairness."); *In re NASDAQ Mkt.-Makers Antitrust Litig.*, 187 F.R.D. 465, 474 (S.D.N.Y. 1998) (Courts have consistently given "'great weight' . . . to the

recommendations of counsel, who are most closely acquainted with the facts of the underlying litigation."). The Settlement is also fully supported by the Plaintiffs.

The fact that the Settlement is the product of arm's-length negotiations between experienced and well-informed counsel, with the assistance of neutral mediators, demonstrates that the process by which the Settlement was reached was fair and not the product of collusion. *See, e.g., Glaberson v. Comcast Corp.*, 2014 WL 7008539, at *4 (E.D. Pa. Dec. 12, 2014) (a settlement is presumed to be fair "when the negotiations were at arm's length, there was sufficient discovery, and the proponents of the settlement are experienced in similar litigation"). The process culminating in the present Settlement strongly supports the Court's granting of preliminary approval.

**2) <u>The Relief Provided To The Class Is Adequate</u>**

Under amended Rule 23(e), the Court must also consider whether the relief to the class is adequate, taking into account "the costs, risks, and delay of trial and appeal." Fed.R.Civ.P. 23(e)(2)(C)(i).

As is explained above, GTL has agreed to pay up to $25 million in combined cash and credits, a substantial sum by any measure. This case has already been litigated for nearly seven years. As with any trial, the trial in this case posed inherent risk, particularly in light of the fact that the parties' opposing damages theories depended upon their respective experts credibility with the jury, as well as the need for unanimity of any verdict. Moreover, as is set forth in the procedural history, GTL has demonstrated a willingness to litigate this matter to the fullest. It would be a virtual certainty that GTL would appeal any adverse judgment, which would result in further delay in any recovery on behalf of the Class. While Plaintiffs believe their case is strong, but there is also an inherent benefit to a certain result now as opposed to the risks of trial (and

appeal) where there is a chance of a greater recovery, but a chance of no recovery as well, and a near certainty of delay in any event.

**3) Plaintiffs Proposed Method of Distributing Relief to the Class Is Effective and Treats Class Members Equitably**

In connection with approval of notice of the Settlement, processing Class Member Claims and making distributions to Class Members, Plaintiffs also seek the Court's authorization to retain Angeion as the Settlement Administrator to supervise and administer the notice procedure in connection with the Settlement as well as the processing of Claims. Angeion is a nationally recognized notice and claims administration firm with extensive experience in settlement administration and will adequately fulfill its duties in this case, just as it did with providing notice to the Class. Since the Court has already certified a Class, there is no need to certify a class as part of the Settlement. Nonetheless, notice of the proposed Settlement must still be circulated to the Class, Fed.R.Civ.P. 23(e)(1), and Class Members have another opportunity to opt out of the Class if they wish. Fed.R.Civ.P. 23(e)(4). As a result of its work in distributing notice of certification of the Class, Angeion already has a viable and working mailing list of Class Members for use in distributing notice of the Settlement to the Class. Notice of the proposed Settlement will be sent to the Class via email and regular mail using the same methodology as sending notice of certification of the class.

The proposed method of distributing relief to Class Members is simple. Class Members will receive payment based upon the amount that the spent with GTL for calling time, and the time period that the calls were made. Class Members, inmates or friends and family members, who are still GTL customers will receive deposits into their respective accounts without the need for submitting a claim form. Class Members who are not current GTL customer will receive cash payments, but will need to submit a claim form under oath with sufficient information to

verify their identity vis-à-vis GTL's customer records, in order to ensure that Settlement monies go to the intended beneficiaries of the Settlement. The Class Members' recovery from the Settlement will be in proportion to the amount they spent with GTL. This method easily satisfies Rules 23(e)(2)(C)(ii) and 23(e)(2)(D).

**4) Proposed Attorney's Fees**

The proposed Settlement Agreement provides that counsel for the Plaintiffs, subject to Court approval, may seek up to $8,332,500 in attorney's fees, plus reimbursement for out-of-pocket costs and expenses and up to $15,000 to each class representative Plaintiff as a Case Contribution Award. These amounts will be paid by GTL in addition to the Settlement amount and, thus, will not reduce the recovery of the Class. The attorney fee award is equal to 33% of the Settlement Benefit and is standard in this Circuit for common fund contingency cases such as this. *E.g., Castro v. Sanofi Pasteur Inc.*, 2017 WL 4776626, at *9 (D.N.J. Oct. 23, 2017) ("The one-third fee is within the range of fees typically awarded within the Third Circuit through the percentage-of-recovery method; the Circuit has observed that fee awards generally ranged from 19% to 45% of the settlement fund. . . . Thus, the requested fee in this matter [of one-third of the settlement fund] is within the normal range."); *In re Ikon Office Sols., Inc. Sec. Litig.*, 194 F.R.D. 166, 194 (E.D. Pa. 2000) ("Percentages awarded have varied considerably, but most fees appear to fall in the range of nineteen to forty-five percent."); *La. Mun. Police Emps. Ret. Sys. v. Sealed Air Corp.*, 2009 WL 4730185, at *8 (D.N.J. Dec. 4, 2009) (noting that "[c]ourts within the Third Circuit often award fees of 25% to 33⅓% of the recovery"); *In re Fasteners Antirust Litig.*, 2014 WL 296954, at *7 (E.D. Pa. Jan. 27, 2014) ("Counsel's request for one third of the settlement fund is consistent with other direct purchaser antirust actions."); *Marchbanks Truck Serv., Inc. v. Comdata Network, Inc.*, 2014 WL 12738907, at *2 (E.D. Pa. July 14, 2014) ("fee awards of one-third of the settlement amount are commonly awarded in this Circuit").

**b) The Court Should Approve the Form and Plan for Disseminating Notice to the Direct Purchaser Settlement Class**

Plaintiffs request that the Court approve the form of the proposed Notice and Summary Notice, substantially in the forms attached as Exs. 1 and 3 to the Preliminary Approval Order, as well as the proposed plan for providing notice of the Settlement to Class Members as set forth in the Preliminary Approval Order. In clear, concise, and plain language, the proposed Notice will "provide all the required information concerning the class members' rights and obligations under the settlement." *Prudential*, 148 F.3d at 328; Fed.R.Civ.P. 23(c)(2)(B). *See also Halley v. Honeywell Int'l, Inc.*, 2016 WL 1682943, at *17 (D.N.J. Apr. 26, 2016) (The notice should be "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections") (quoting *Mullane v. Central Hanover Bank &Tr. Co.*, 339 U.S. 306, 314 (1950)). The Notice will advise recipients of, among other things, the nature of the Action, the definition of the Class, the essential terms of the Settlement (including the claims that will be released), information regarding Plaintiffs' motion for attorneys' fees and reimbursement expenses and the binding effect of the judgment. The Notice also will provide specifics on the date, time and place of the Fairness Hearing and set forth the procedures, as well as deadlines, for: (i) requesting exclusion from the Class; (ii) entering an appearance; (iii) objecting to the Settlement, the Plan of Distribution and/or the motion for attorneys' fees and reimbursement of expenses; and (iv) submitting a Claim Form. The Summary Notice will provide a summary of the foregoing information and will advise potential Class Members how to obtain the more-detailed Notice.

Likewise, Plaintiffs' proposed notice plan provides notice in a reasonable manner to all class members who would be bound by the proposal. Specifically, the Notice will be sent by email to Class members for whom Angeion has valid email addresses, and by postcard notice to

Class Members for whom Angeion has a valid mailing address, but no valid email address. A Claim Form, substantially in the form attached as Ex. 2 to the Preliminary Approval Order, will be included with the Notice.

In addition to individual, mailed notice, the proposed notice plan includes publication of the Summary Notice in the *Star Ledger*, the *South Jersey Times* and the *Prison Legal News* on two occasions, just as notice of the certification of the Class was published. *See Mullane*, 339 U.S. at 317-18 (publication is an acceptable means of providing adequate notice for those whose names and addresses cannot be determined through reasonable efforts). The Notice, Summary Notice and Claim Form, along with other documents and information relevant to the Settlement, also will be posted on a website www.gtlprisoncallsclassaction.com, which was established to give notice of certification of the Class.

This type of notice program is frequently used in class action cases. The proposed notice plan meets the requirements of Rule 23, comports with due process, and will fairly apprise potential Class Members of the existence of the Settlement and their options in connection therewith. Accordingly, Plaintiffs respectfully submit that the proposed notice plan is adequate and should be approved by the Court.[5]

**c) The Court Should Adopt The Parties' Proposed Settlement Schedule**

In connection with preliminary approval of the Settlement, Plaintiffs respectfully propose the schedule set forth below for Settlement-related events. The proposed schedule revolves around the date the Court enters the Preliminary Approval Order and the date of the Fairness Hearing—which Plaintiffs request be 90 days after the anticipated service of the CAFA notice by GTL.

[5] The Class Action Fairness Act, 28 U.S.C. § 1715, requires notice of the proposed Settlement to be served on appropriate State and Federal officials. Pursuant to the Settlement Agreement, Angeion, at GTL's expense, will provide such notice. Settlement Agreement, ¶ 21.

| EVENT | PROPOSED TIMING |
|---|---|
| Mailing of the Notice and Claim Form to Direct Purchaser Settlement Class Members (Preliminary Approval Order, ¶ 5) | Twenty-one days after the entry of the Preliminary Approval Order. (the "Notice Date") |
| Publishing the Summary Notice in the *Star Ledger*, the *South Jersey Times* and the *Prison Legal News* (Preliminary Approval Order, ¶ 6) | As soon as practicable after the Notice Date |
| Posting the Notice, Summary Notice and Claim Form on the website created for the Settlement, www.gtlprisoncallsclassaction.com and establishing a settlement-specific toll-free telephone number (Preliminary Approval Order, ¶ 7) | On or before the Notice Date |
| Filing of opening briefs and materials in support of final approval of Settlement, Plan of Distribution and Plaintiffs' Counsel's fee and expense application (including application of Case Contribution Awards) (Preliminary Approval Order, ¶20) | Four weeks prior to Fairness Hearing |
| Requesting Exclusion from the Settlement Class (Preliminary Approval Order, ¶ 9) | Forty-five days after the Notice Date |
| Objecting to the Settlement, Plan of Distribution and/or Plaintiffs' Counsel's application for attorneys' fees, reimbursement of expenses, and Case Contribution Awards (Preliminary Approval Order, ¶ 15) | Forty-five days after the Notice Date |
| Filing of reply briefs (Preliminary Approval Order, ¶ 21) | One week prior to Fairness Hearing |
| Fairness Hearing (Preliminary Approval Order, ¶ 22) | TBD |
| Submitting Claim Forms (Preliminary Approval Order, ¶ 17) | 120 days from the Notice Date |

## CONCLUSION

For all the foregoing reasons, Plaintiffs respectfully request that the Court grant preliminary approval of the Settlement, preliminarily certify the settlement class, and enter the proposed Preliminary Approval Order.

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Dated: May 28, 2020

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