

26 WHEREAS, on October 2, 2000, Magistrate Judge Azrack issued a Report and Recommendation
27 that Defendants' motion be granted in part and denied in part. More specifically, the Report and Recom-
28 mendation recommended that Defendants' motion to deny class certification as a matter of law be granted
29 with respect to any claim for damages under either Rule 23(b)(2) or Rule 23(b)(3); denied with respect to
30 a class seeking injunctive relief only under Rule 23(b)(2); and recommended against the exercise of sup-
31 plemental jurisdiction; and

32 WHEREAS, on January 9, 2001, the District Court adopted Magistrate Judge Azrack's recom-
33 mendations; and

34 WHEREAS, on January 25, 2001, Plaintiffs sought Fed. R. Civ. P. 23(f) interlocutory review of
35 the denial of certification as a matter of law of a Rule 23(b)(2) or Rule 23(b)(3) damages class; and

36 WHEREAS, on September 26, 2001, the United States Court of Appeals for the Second Circuit
37 granted Plaintiffs' Fed. R. Civ. P. 23(f) petition; and

38 WHEREAS, on June 2, 2003, after briefing and oral argument, the United States Court of Ap-
39 peals for the Second Circuit vacated and remanded the District Court's order; and

40 WHEREAS, on May 4, 2004, after the close of class discovery, Plaintiffs moved for class certifi-
41 cation under Fed. R. Civ. P. 23; and on June 14, 2004, Defendants filed opposition papers to Plaintiffs'
42 motion for class certification; and

43 WHEREAS, on June 29, 2005 the parties agreed to the terms of a settlement of this Action, and
44 on January 25, 2007 the District Court denied approval of that settlement;

45 WHEREAS, counsel for the parties herein have conducted protracted arm's-length settlement ne-
46 gotiations to resolve the claims that Plaintiffs asserted against Defendants; and

47 WHEREAS, Defendants have denied and continue to deny that the Amended Complaint states a
48 claim for relief, that the practices as to which Plaintiffs seek relief are violative of any law or wrongful in
49 any way whatsoever, that Defendants have breached any duty to Plaintiffs or any member of the Class,
50 and that either Plaintiff or any member of the Class is entitled to any relief whatsoever, and have agreed
51 to the compromise and settlement set forth in this Stipulation solely for the purpose of putting these mat-

52 ters to rest and, in furtherance thereof, seek to obtain a judicial declaration of the fairness of the compro-
53 mise of the class action allegations asserted by Plaintiffs in the matter set forth herein; and

54 WHEREAS, Plaintiffs' counsel, in agreeing to the compromise and settlement set forth herein,
55 have considered and weighed the issues involved in establishing the validity of the claims alleged against
56 Defendants with respect to claims under Section 551 of the Cable Act at issue and have concluded on be-
57 half of Plaintiffs and the Class that the terms and conditions set forth herein are fair and reasonable and
58 should be submitted to the District Court for approval.

59 NOW, THEREFORE, IT IS STIPULATED AND AGREED, by and between the parties hereto,
60 subject to the District Court's approval pursuant to Rule 23(e) of the Federal Rules of Civil Procedure,
61 that this Action be settled and compromised, according to the following terms and conditions:

62 DEFINITIONS

63 As used in this Stipulation, the following capitalized terms (not already defined above or as may
64 be defined in the Terms and Conditions set forth in paragraphs 1 to 36 below) shall have the meanings set
65 forth as follows:

66 A. "Class" means "All persons throughout the United States who were Time War-
67 ner Cable subscribers at any point in time between January 1, 1994 and December 31, 1998, except for
68 current Time Warner Cable officers, directors, employees and counsel."

69 B. "Class Member" means any person in the Class who has not filed a timely and
70 valid Request for Exclusion from the Class, as hereinafter defined, and who has not previously released
71 Time Warner from any and all claims relating to the subject matter of this Action.

72 C. "Class Period" means the period from January 1, 1994 through December 31,
73 1998.

74 D. "Costs of Class Notice" means all costs and expenses incurred in discharging the
75 obligation to notify Class Members of the pending Action against, and settlement with, Time Warner
76 through direct mail and publication.

77 E. “Effective Date” means the date by which all of the following have occurred:
78 (1) a Class Notice Order, as described below and substantially in the form annexed hereto as Exhibit 1,
79 has been entered by the District Court; (2) the Settlement has been approved in all respects by the District
80 Court; (3) an Order and Final Judgment, substantially in the form annexed hereto as Exhibit 2, as defined
81 in subparagraph M, below, has been entered by the District Court and not vacated, stayed or modified in
82 any material way, upon appeal or otherwise; and (4) either (i) the time to appeal, or otherwise seek review
83 of the Order and Final Judgment, has expired without any appeal having been taken or review sought, or
84 (ii) if an appeal is taken or review sought, such appeal or review shall have been finally determined and
85 the Order and Final Judgment not vacated or modified in any material way by the highest court before
86 which appeal or review is sought and the Order and Final Judgment is not subject to further judicial re-
87 view.

88 F. “Final Approval” means the date on which the District Court enters the Order
89 and Final Judgment.

90 G. “Class Notice” shall mean the combination of the “Class Notice — Publication”;
91 the “Class Notice — Long Form”; the “Class Notice — Short Form”; and the “Class Notice — Former
92 Claimants.”

93 H. “Class Notice Order” means the Order substantially in the form annexed hereto
94 as Exhibit 1, to be entered by the District Court, *inter alia*, preliminarily approving the terms and condi-
95 tions of this Stipulation, directing that Class Notice be provided to the Class and scheduling a hearing
96 concerning the Final Approval of the Settlement.

97 I. “Class Notice — Publication” means the Notice of Pendency of Class Action,
98 Proposed Settlement of Class Action and Settlement Hearing, substantially in the form annexed hereto as
99 Appendix A to Exhibit 1, and which shall be published pursuant to the Class Notice Order.

100 J. “Class Notice — Long Form” means the Notice of Pendency of Class Action,
101 Proposed Settlement of Class Action and Settlement Hearing, substantially in the form annexed hereto as
102 Appendix B to Exhibit 1, which shall be mailed pursuant to the Class Notice Order *via* Third Class Mail

103 to List Class Members with respect to whom Time Warner has obtained a current address from the Na-
104 tional Change of Address (“NCOA”) database or Time Warner’s current subscriber database.

105 K. “Class Notice — Short Form” means the short-form postcard Notice of Pend-
106 ency of Class Action, Proposed Settlement of Class Action and Settlement Hearing, substantially in the
107 form annexed hereto as Appendix C to Exhibit 1, which shall be mailed pursuant to the Class Notice Or-
108 der to List Class Members with respect to whom Time Warner has a last known address which could not
109 be updated with the NCOA or current subscriber database.

110 L. “Class Notice — Former Claimants” means the short-form postcard Notice of
111 Pendency of Class Action, Proposed Settlement of Class Action and Settlement Hearing, substantially in
112 the form annexed hereto as Appendix D to Exhibit 1, which shall be sent pursuant to the Class Notice Or-
113 der to individuals who claimed a benefit under the Stipulation and Agreement of Settlement dated June
114 29, 2005.

115 M. “Order and Final Judgment” means the Order and Final Judgment, substantially
116 in the form annexed hereto as Exhibit 2, (i) granting final approval by the District Court of the Settlement
117 upon the terms and conditions set forth in this Stipulation; and (ii) dismissing the Action with prejudice
118 and without costs to any party, with the exception of proceedings to enforce the Stipulation.

119 N. “Preliminary Approval” means the date on which the District Court enters the
120 Class Notice Order.

121 O. “Released Claims” shall mean, subject to Section 12.d, all claims which have
122 been alleged in the Action, and claims which could have been alleged in the Action relating to Time War-
123 ner’s privacy notices and list sale practices between 1994 and 1998 under 47 U.S.C. § 551 and/or any
124 similar federal or state consumer protection law, privacy law and/or common law.

125 P. “Request for Exclusion” means a written request to be excluded from the Class
126 submitted by a Class Member in such form, in such manner, and within the time limitation as set forth in
127 the Class Notice.

128 Q. “Settlement” means the terms and conditions set forth in this Stipulation.

129 R. "Settlement Hearing" means a hearing to be held by the District Court pursuant
130 to the Class Notice to consider Final Approval of the Settlement.

131 S. "Time Warner Releasees" means Time Warner Cable, Inc., all of its divisions
132 during the class period, along with all of its predecessor entities (including, but not limited to, Time War-
133 ner Entertainment Company, L.P.), successors, affiliated entities (including, but not limited to, the Time
134 Warner Entertainment-Advance/Newhouse Partnership) and the officers and directors of each such entity.

135 **TERMS AND CONDITIONS**

136 1. Consistent with the terms of this Stipulation, the parties hereto and their attorneys agree
137 to cooperate with one another in seeking District Court approval of this Stipulation and to use their rea-
138 sonable best efforts to consummate the Settlement. Consistent with the terms of this Stipulation, each of
139 the parties hereto will exert every reasonable effort and will act reasonably and in good faith, to agree
140 upon and execute, at the earliest practicable time, such other documentation as may be required in order
141 to: (i) implement the matters enumerated herein; (ii) obtain preliminary and final approval by the District
142 Court of the Settlement upon the terms and conditions set forth in this Stipulation; and (iii) secure dis-
143 missal of the Action with prejudice and without costs to any party. Except as set forth herein, no party to
144 this Stipulation shall seek to evade its good faith obligations to seek approval and implementation of this
145 Settlement by virtue of any court or regulatory rulings, orders, governmental report, legislation, or other
146 development, whether in the Action or in any other litigation, or otherwise, that might hereinafter occur
147 which might be deemed to alter the relative strengths of the parties with respect to any claim or defense or
148 their relative bargaining power with respect to negotiating a settlement. The parties deem this Settlement
149 to be fair and reasonable and have arrived at this Settlement in arm's-length negotiations taking into ac-
150 count all relevant factors, present or potential.

151 **STIPULATION TO SETTLEMENT CLASS**

152 2. For settlement purposes only, Plaintiffs and Defendants stipulate that the Class will be
153 certified under Fed. R. Civ. P. 23(b)(2) and/or 23(b)(3).

178 ii. two (2) free Movies on Demand, assuming that when the benefit is dis-
179 tributed that person resides in an area serviced by Time Warner and also subscribes to at
180 least Time Warner's basic cable service; OR

181 iii. the ability to transfer to any other person ("Transferee") the benefits de-
182 scribed in paragraphs 4(b)(i) and 4(b)(ii), assuming that when the benefit is distributed
183 the Transferee resides in an area serviced by Time Warner and, with respect to the benefit
184 described in paragraph 4(b)(ii), also subscribes to at least Time Warner's basic cable
185 service; OR

186 iv. a five dollar (\$5) check.

187 c. Those class members who previously elected a benefit in connection with the
188 prior Stipulation and Settlement Agreement dated June 29, 2005 ("Former Claimants"), shall automati-
189 cally, without having to prepare and submit a Claim Form, be given the option of selecting one of the fol-
190 lowing settlement benefits:

191 i. one (1) free month of any service that is available on a monthly basis and
192 to which the customer does not currently subscribe, assuming that when the benefit is dis-
193 tributed that person continues to reside in an area serviced by Time Warner; OR

194 ii. two (2) Movies on Demand, assuming that when the benefit is distributed
195 that person continues to reside in an area serviced by Time Warner; OR

196 iii. the ability to transfer to any other person the benefit described in para-
197 graph 4(c)(i), assuming that when the benefit is distributed the Transferee resides in an
198 area serviced by Time Warner.

199 d. Former Claimants may also, instead of receiving the services benefits described
200 in paragraph 4(c), receive a \$5 check by filling out and submitting a new Claim Form.

201 e. All List Class Members who select a services benefit may (i) cancel the free ser-
202 vice at the end of the free month of service with no further obligation; or (ii) continue with the service
203 beyond the free month and be billed accordingly.

204 f. No Class Member or Transferee may aggregate their benefit so as to receive
205 more than one month of free services or more than two free Movies on Demand.

206 5. Time Warner will provide the settlement administrator with the names and addresses of
207 the List Class Members so that inquiries by potential Class Members as to their status can be answered.

208 6. A representative sampling of available Settlement Benefit services, and product choices,
209 taken from the New York City division at current prices, is as follows:¹

210

SETTLEMENT BENEFIT	DOLLAR VALUE TO SUBSCRIBER
All-In-One Triple Play Package	\$129.95
High Speed Online and Phone	\$84.90
Digital Starter Pack and High Speed Online Intro	\$79.90
Digital Starter Pack	\$49.95
Digital Phone	\$49.95
Six (6) Premium Channels (HBO, MAX, SHO, etc.)	\$39.95
One (1) Premium Channel	\$12.95
Two (2) Movies on Demand (\$3.95 each)	\$7.90

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CLASS NOTICE AND CLAIMS ADMINISTRATION

213 7. Time Warner will notify Class Members of the settlement and available benefits through
214 a Class Notice program substantially in the form as set forth in Appendices A-D of Exhibit 1, attached
215 hereto. Time Warner will give notice of the settlement benefits available to List Class Member Current

¹ The dollar value to subscriber will vary based upon the other services currently subscribed to, difference in prices among Time Warner Cable divisions, and changes in prices over time. For purposes of this chart, we assume Time Warner Cable of New York City division current pricing.

216 Subscribers by sending to each under separate cover from the monthly bill the Class Notice, and by pub-
217 lishing same.

218 8. The Class Notice — Long Form will also include a claim form by which Class Members
219 may select their settlement benefit (the “Claim Form”). The Claim Form will also be available by mail
220 from the Claims Administrator or via the internet at www.twcsettlement.com. Each Class Notice will
221 explicitly and prominently state that if the List Class Members choose a services benefit, they have the
222 option to continue the selected service past the free period for the usual charge, or cancel the service.
223 Each Class Notice will also provide that Class Members shall have until 60 days after the last date Class
224 Notice is mailed or published to make a Request for Exclusion (the “Opt Out Period”).

225 9. Time Warner also will include a prominent message on the cable bill of each List Class
226 Member (or Transferee) who claims a benefit which will expressly state that the List Class Member (or
227 Transferee) has the option to continue the selected service past the free period for the usual charge, or
228 cancel the service (the “Reminder Notice”). The Reminder Notice is to be sent during the month in which
229 that List Class Member (or Transferee) is receiving the settlement benefit, and shall include the relevant
230 contact information that the subscriber would need to cancel the service. For those Time Warner custom-
231 ers who receive their bills electronically, the Reminder Notice will appear on the e-mail which informs
232 those customers that their electronic bill has been posted to the website.

233 10. The Class Notice and Reminder shall state that those receiving services benefits may
234 cancel the selected benefit at its expiration by utilizing the toll free and/or local telephone number(s) that
235 appear on their regular monthly bills, and which will be available through the website and toll free tele-
236 phone number established by the Claims Administrator. List Class Members or Transferees who wish to
237 terminate their free service may do so by utilizing Time Warner’s standard cancellation procedures. Time
238 Warner represents that it shall not create impediments to any such cancellation requests.

239 11. The Claim Form will include an acknowledgment, to be signed by the subscriber, that the
240 subscriber will have the option, at the end of the free service period, to cancel the service, or retain it at

241 regular billed rates. The Claim Form also will also include a means by which a List Class Member For-
242 mer Subscriber may elect to transfer the settlement benefit to another.

243 **REMEDIAL RELIEF**

244 **12. Privacy Notice:**

245 a. During the course of this litigation, and in part as a result of it, Time Warner has
246 made certain revisions to the video programming services portion of the Time Warner Cable and
247 Affiliated ISP's Subscriber Privacy Notice. As part of this settlement, Time Warner will revise
248 further the disclosure in the Privacy Notice as reflected in the form of Privacy Notice attached
249 hereto (the "Revised Privacy Notice") as Exhibit 3.

250 b. Plaintiffs understand that Time Warner has represented that it does not presently
251 engage in the video programming services subscriber national list sales business previously con-
252 ducted by Time Warner Cable Direct which, for purposes of this Settlement Agreement, is limited
253 to both (i) the enhancement of subscriber information with commercially available information,
254 and (ii) the list sale/rental of such enhanced information by the corporate office (the "National
255 List Sales Business"). Because Plaintiffs recognize that it is possible that Time Warner will en-
256 gage in a National List Sales Business in the future, should Time Warner do so, Time Warner
257 shall revise the Privacy Notice to the extent deemed necessary by Time Warner to disclose that
258 business practice.

259 c. For a period of three years from Final Approval, Time Warner shall provide
260 Class Counsel with copies of the annual form of Privacy Notice at the time such new Privacy No-
261 tices are distributed by Time Warner to its divisions.

262 d. This settlement is without prejudice to any claim that a future Time Warner Na-
263 tional List Sales Business or any substantially similar practice, or the Privacy Notice disclosure or
264 non-disclosure thereof, violates the privacy provisions of the Cable Act.

265 e. This paragraph 12 and its subparts have no application to the digital phone and
266 high speed data services provided by Time Warner or the use of information collected by Time
267 Warner from subscribers to such services.

268 13. **Privacy Practices Disclosure:** Time Warner will include a disclosure regarding its pri-
269 vacy practices, including the text of its Revised Privacy Notice, on its website.

270 14. **Chief Privacy Officer:** Time Warner represents that it will employ a Chief Privacy Of-
271 ficer whose responsibilities include ensuring that Time Warner is in compliance with the privacy provi-
272 sions of the Cable Act, all other applicable state and federal privacy laws, as well as internal Time Warner
273 privacy guidelines and policies.

274 15. **Cy Pres:** Time Warner will give a total of \$250,000 to the Samuelson Law, Technology
275 & Public Policy Clinic at Boalt Hall Law School (UC - Berkeley) and another \$250,000 to the Center for
276 Democracy and Technology's Ronald Plesser Fellowship.

277 **MONETARY AWARDS TO THE NAMED PLAINTIFFS**

278 16. Time Warner will pay "incentive awards" to Messrs. Parker and DeBrauwere in the
279 amount of \$2,500 each in consideration of their time and expenses devoted to this litigation on behalf of
280 the class.

281 **ADMINISTRATIVE COSTS OF THE SETTLEMENT**

282 17. Time Warner will pay for the administrative costs of the settlement, including the follow-
283 ing:

- 284 a. Printing the Class Notice;
- 285 b. Mailing the Class Notice — Long Form *via* Third Class Mail;
- 286 c. Mailing the Class Notice — Short Form as a postcard;
- 287 d. Mailing Class Notice — Former Claimants as a postcard;
- 288 e. Publication of the Class Notice;
- 289 f. Administration of opt-outs to the Proposed Class Settlement;
- 290 g. The printing and mailing of checks; and

291 h. Administration of the free service to the Class Members and Transferees.

292 **CLASS COUNSEL**

293 18. As soon as practicable, Plaintiffs and Defendants shall jointly move the District Court for
294 entry of the Class Notice Order. Plaintiffs and Defendants further agree and stipulate, solely for purposes
295 of effectuating the Settlement, to certification of the Class pursuant to Rule 23(a) and (b)(2) and/or (b)(3)
296 of the Federal Rules of Civil Procedure, and further agree to the appointment of Plaintiffs as Class Repre-
297 sentatives and the appointment of Hagens Berman Sobol Shapiro LLP, Kirby McInerney LLP, Cuneo
298 Gilbert & LaDuca, LLP, and Law Offices of James M. Beaulaurier, as Class Counsel. Defendants are not
299 waiving and expressly reserve the right to contest class action treatment of Plaintiffs' claims if the Effec-
300 tive Date fails to occur for any reason, including without limitation any possible termination of this Set-
301 tlement.

302 **RELEASE AND FINAL JUDGMENT**

303 19. In exchange for the consideration to be provided under this Settlement, all Class Mem-
304 bers will release the Time Warner Releasees of the Released Claims.

305 20. The parties to this Stipulation agree to the entry of an Order and Final Judgment consis-
306 tent with this Stipulation.

307 **TIMING OF CLASS NOTICE AND CLAIMS**

308 21. Upon entry of the Class Notice Order by the District Court in the form annexed hereto as
309 Exhibit 1, and after the computer match set forth in paragraph 3 has been performed, Defendants shall
310 cause the Class Notice attached as Appendices B, C and D to Exhibit 1 hereto to be mailed no fewer than
311 60 days prior to the date established by the District Court for the Final Approval hearing.

312 22. Publication notice will also be provided by Defendants as set forth in Appendix A to Ex-
313 hibit 1 no fewer than 60 days prior to the date established by the District Court for the Final Approval
314 hearing concerning the fairness of the Settlement. No fewer than seven (7) days prior to the date estab-
315 lished for the fairness hearing, Defendants shall cause to be filed with the District Court an affidavit at-
316 testing to the mailing and publication of the Class Notice.

343 for payment of fees and costs exceed \$5 million, regardless of whether such fees are awarded or otherwise
344 paid to Class Counsel, objectors' or interveners' counsel or anyone else.

345 **TERMINATION RIGHTS (THIS SECTION TO BE FILED UNDER SEAL)**

346 28. Time Warner has a right to terminate this Settlement Agreement in accordance with the
347 terms reflected in Appendix 1 appended hereto, which will be filed under seal.

348 **MISCELLANEOUS**

349 29. Neither this Stipulation, including all exhibits, orders or other documents referred to
350 herein nor any terms or provisions of the Stipulation or any of the negotiations or proceedings related to
351 this Stipulation shall be:

352 a. Construed as an admission whatsoever by Plaintiffs, Defendants, the Time War-
353 ner Releasees, or anyone else on any point of fact or law, or of any alleged fault or wrongdoing or
354 liability whatsoever relating to any issue in this Action or the certifiability, *vel non*, of any pro-
355 posed Class in this Action or any other action or proceeding (judicial, administrative or other-
356 wise);

357 b. Offered as evidence against Defendants or the Time Warner Releasees in this Ac-
358 tion or any other action or proceeding (judicial, administrative or otherwise), except proceedings
359 to enforce the Settlement.

360 30. This Stipulation shall not be construed or deemed to be evidence of a waiver of any ap-
361 plicable statute of limitations or any other defense or plea in abatement.

362 31. The parties agree not to issue any press release concerning this Settlement without the
363 other's review and approval. Such approval shall not be unreasonably withheld. For example, approval
364 shall not be withheld if the press release is consistent with statements made in the Stipulation, class no-
365 tice, and/or other documents filed with the District Court. Postings to the parties or their counsels' web-
366 sites shall be similarly restricted to being consistent with statements made in the Stipulation, class notice,
367 and/or other documents filed with the District Court, and shall not disparage any party.

368 32. If the Settlement is approved by the District Court, at or after the Settlement Hearing, the
369 parties promptly shall move the District Court for entry of the Order and Final Judgment in the form at-
370 tached hereto.

371 33. This Stipulation shall be binding upon and inure to the benefit of the parties hereto and
372 their respective heirs, executors, administrators, successors and assigns, and upon any corporation or
373 other entity into or with which any party hereto may merge or consolidate.

374 34. This Stipulation shall be construed in accordance with the internal laws of the State of
375 New York, without giving effect to New York's choice of law rules.

376 35. The waiver by one party of any breach of this Stipulation by another party shall not be
377 deemed a waiver of any other prior or subsequent breach of this Stipulation.

378 36. The foregoing, including the exhibits referred to herein and annexed hereto, constitutes
379 the entire agreement among the parties hereto with respect to the Settlement of the Action. This Stipula-
380 tion supersedes all prior negotiations and agreements and may not be modified or amended, except in
381 writing, signed by all parties hereto, or their successors in interest. This Stipulation may be executed in
382 counterparts by any one of the signatories hereto, including by facsimile, and as so executed shall consti-
383 tute one agreement.

384 IN WITNESS WHEREOF, the parties hereto have executed this Stipulation and Agreement of

385 Settlement on December [], 2007.

386 HAGENS BERMAN SOBOL SHAPIRO LLP

CAHILL GORDON & REINDEL LLP

387 By _____

By _____

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411 *Class Counsel*

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APPENDIX 1 (FILED UNDER SEAL)

1. Within ten (10) business days after the District Court has held its preliminary fairness hearing, or ten (10) days after the District Court enters and order granting preliminary approval to this Settlement, whichever is later, Time Warner shall have the absolute and unconditional right, in its sole discretion, to terminate this Settlement Agreement.

2. Within ten (10) business days after the last day of the Opt-Out Period, Time Warner will be permitted to terminate this Settlement Agreement if:

- A. Greater than 5,000 Class Members exercise their opt-out rights;
- B. A group of greater than 1,500 Class Members organized by one law firm or unified group of law firms chooses to opt out and/or intervene en masse; or
- C. Any complaint is filed on behalf of an “opt out class.”