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12

13 **UNITED STATES DISTRICT COURT**
14 **NORTHERN DISTRICT OF CALIFORNIA**

15 DUANE WATERS, DEBRA TURNER)
16 and RUDY FAJARDO, on behalf of)
17 themselves, all others similarly situated)
and the general public,)

18 Plaintiffs,)

19 vs.)

20 AT&T SERVICES, INC. (formerly SBC)
Services, Inc.) and DOES 1 through 10;)

21 Defendants.)
22)
23)

Case No: CV 09-3983 BZ

**DECLARATION OF MICHAEL D.
SEPLow IN SUPPORT OF MOTION FOR
FINAL APPROVAL OF CLASS ACTION
SETTLEMENT AND MOTION FOR
AWARD OF ATTORNEYS' FEES, COSTS,
CLAIMS ADMINISTRATION EXPENSES
AND CLASS REPRESENTATIVE
ENHANCEMENTS**

**Date: February 9, 2011
Time: 10:00 a.m.
Courtroom: G**

24
25 **DECLARATION OF MICHAEL D. SEPLow**

26 I, Michael D. Seplow declare as follows:

- 27 1. I am an attorney-at-law and a partner with the firm Schonbrun DeSimone Seplow
28

1 Harris Hoffman & Harrison LLP (“SDSHH”). I am duly admitted to practice before this
2 Honorable Court and am one of the attorneys of record for Plaintiffs in this action. I have
3 personal knowledge of the facts set forth herein, (except where indicated upon information and
4 belief) and if called as a witness, could and would testify competently thereto. This declaration is
5 being made in support of the Motion for Final Approval of Class Action Settlement and the
6 Motion for Award of Attorneys’ Fees, Costs, Claims Administration Expenses and Class
7 Representative Enhancements. I have previously submitted two declarations in this case in
8 connection with the Motion for Preliminary Approval (dated July 15, 2010 and August 23, 2010)
9 and the contents of those declarations are incorporated herein by reference.

10 11 LEGAL EXPERIENCE

12 2. I graduated Magna Cum Laude from Duke University in 1985, with
13 an A.B. degree, where my major was in Public Policy Studies. I received my J.D. degree from
14 UCLA School of Law in 1990, where I ranked in the top 15 percent of my class. During law
15 school, I served as an extern for the Honorable Abner J. Mikva on the United States Court of
16 Appeals for the District of Columbia Circuit.

17 3. I was admitted to the California Bar in 1990. In or about October 1990, I began
18 working as an associate practicing business litigation with the law firm of Blanc, Williams,
19 Johnston & Kronstadt in Century City.

20 4. In January 1992, I joined the law firm of Schonbrun & DeSimone, where I began
21 to practice civil rights and employment litigation on behalf of individuals. In 1999, the firm
22 changed its name to Schonbrun DeSimone Seplow Harris & Hoffman, LLP (“SDSHH”). In
23 September 2010, the firm changed its name to Schonbrun DeSimone Seplow Harris Hoffman &
24 Harrison, LLP. While at my present firm, I have had an active role in several successful civil
25 rights and employment cases, including a total settlement in excess of 3.75 million dollars in a
26 case in which a mentally disabled Los Angeles resident was wrongfully imprisoned in New York
27 State for two years (*Sanders Lee v. New York State Dept of Correctional Services, et al.*), which
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1 resulted in a published decision (*Lee v. City of Los Angeles*, 250 F.3d 668 (9th Cir. 2001)). In
2 July 2002, I was the subject of a profile in the Los Angeles Daily Journal's Verdicts &
3 Settlement feature as a result of my firm's work in the *Sanders Lee* case. I have previously been
4 awarded attorneys' fees by judges in various matters. For example, in or about March 2006, U.S.
5 District Judge Christina Snyder granted Plaintiff's motion for attorneys' fees after I represented a
6 Plaintiff who won a jury verdict in August 2005 against the County of Orange in a federal civil
7 rights/employment case and awarded me an hourly rate of \$425.00 (*Orange v. County of Orange*,
8 Case No. CV-03-6147 CAS). In December 2010, I was awarded an hourly rate of \$590 by
9 District Judge Christina Snyder of the Central District of California in the case of *Rauda v. City*
10 *of Los Angeles*, CV-08-3128 CAS. I was also lead counsel in an action entitled *Jenkins v. Daniel*
11 *Murphy Catholic High School*, Case No. CV-05-0623 SAL, in which the district court granted
12 summary judgment in favor of my client and held as a matter of law that the defendant employer
13 had violated the Americans With Disabilities Act.

14 5. I have also been counsel in several employment class action cases which resulted
15 in class wide settlements, including *Shoff et al v. AT&T et al*, Case No: CV 07-3289 DSF
16 (AGRx) (U.S.D.C. Central District of Cal.), *Doyle et al. v. AT&T et al.*, Case No. 08 CV 1275
17 JAH WMC (U.S.D.C Southern District of Cal.), *Lita v. Bunim-Murray Productions, et al.*, Case
18 No. BC 350590 (L.A. Superior Court), and *Henderson v Raytheon*, Case No. BC 381868 (L.A.
19 Superior Court). I am also counsel in numerous putative class action employment cases,
20 including *Alberts v. Aurora Behavioral Health Care*, Case No. BC 419340 (L.A. Superior Court)
21 and *Santiago v. AMDOCS, Inc.* Case No. 3:10-cv-04317-SI (U.S. D.C. Northern District of Cal.).

22 6. I am a member of various professional organizations, including the California
23 Employment Lawyers Association (CELA), the Consumer Attorney's Association of Los
24 Angeles (CAALA), the Los Angeles County Bar Association and the Labor & Employment
25 Section of the California Bar. I was listed as a "Super Lawyer" in 2004-2010 by Los Angeles
26 Magazine. In addition, I have spoken at MCLE events on civil rights and employment law.

27 7. My firm has actively commenced, prosecuted and concluded numerous class
28

1 actions and other complex cases, including constitutional class actions. Our firm was one of the
2 lead counsel on the groundbreaking case, *Doe, et al. v. Unocal Corp., et al.* (United States
3 District Court, Central District of California, Case No. CV 96-6959-RSWL) in which Unocal
4 was sued for human rights abuses committed during the construction of an oil pipeline in
5 Myanmar. I have been active in the case of *Maynas Carijano v. Occidental Petroleum*, Case No.
6 07-5068 PSG, in which my firm is one of several counsel representing residents of a remote area
7 of Peru who are suing for environmental contamination to their native land. I was one of a team
8 of lawyers who worked on a successful appeal before the Ninth Circuit Court of Appeals which
9 reversed the District Court's dismissal of the action based on the doctrine of *forum non-*
10 *conveniens.* (*Maynas Carijano v. Occidental Petroleum Corp.*, --- F.3d ---, 2010 WL 49254592,
11 (December 6, 2010)).

12 13 SUMMARY OF THE WATERS LITIGATION

14 8. Plaintiffs Duane Waters and Debra Turner, formerly employed as Senior Analysts
15 (also known as Senior IT Analysts) with AT&T Services, filed this class action complaint on
16 August 27, 2009 against Defendant AT&T Services Inc. ("Defendant" or "AT&T") in the United
17 States District Court for the Northern District of California alleging violations of both California
18 law and the Fair Labor Standards Act ("FLSA"). On September 16, 2009, Plaintiffs filed a First
19 Amended Complaint which added Rudy Fajardo, a former Senior Database Administrator, as a
20 named plaintiff. Defendant filed its Answer to the First Amended Complaint on October 28,
21 2009 in which it denied Plaintiffs' claims and asserted numerous affirmative defenses.

22 9. After participating in the early meeting of counsel, the parties, with the Court's
23 permission, agreed to stay formal discovery and participate in a private mediation. The parties
24 participated in extensive informal discovery, which included surveys being sent to all class
25 members, receipt and review of approximately 150 surveys, telephone interviews with dozens of
26 class members, review and analysis of documents and data provided by Defendant, including
27 analysis of the data and survey responses by Plaintiffs' expert forensic accountant.
28

1 10. On May 12, 2010, the Counsel for all parties participated in an all day mediation
2 at the San Francisco offices of well-respected class action mediator, Mark Rudy. At the
3 conclusion of the mediation, the parties were at an impasse. Thereafter, Mr. Rudy proposed a
4 mediator's compromise to resolve this case and gave each side one week to consider the
5 proposal. On May 19, 2010, the mediator informed both sides that his proposal had been
6 accepted. Thereafter, counsel for the parties worked on drafting an initial memorandum
7 agreement and a more detailed proposed Settlement Agreement, subject to the Court's approval.^{1/}

8 11. On July 15, 2010, Plaintiffs filed an unopposed motion for Preliminary
9 Approval of the Class Settlement. On August 4, 2010, the Court conducted an extensive hearing
10 concerning the proposed settlement, which was attended by counsel for all parties. At the
11 conclusion of the August 4, 2010 hearing, the Court ordered the parties to submit additional
12 information and briefing concerning the fairness of the proposed settlement and ordered the
13 parties to make certain changes to the proposed settlement agreement.

14 12. On August 23, 2010, the parties submitted the additional information requested by
15 the Court, including declarations from counsel for both sides which included information
16 concerning the potential value of the claims, and a revised settlement agreement which addressed
17 the Court's concerns.

18 13. On September 13, 2009, the Court issued an Order for Preliminary Approval of
19 Class Action Settlement, Conditional Class Certification, Approval of Class Notice and Setting
20 of a Fairness Hearing, which approved of the settlement and the notice forms, subject to certain
21 minor revisions [See September 13, 2010 Order at 3:16-4:14]. The Court also approved the form
22 and manner in which notice was to be sent to the class members, as well as the manner in which
23

24
25 1. As part of the Settlement Agreement, Defendant provided to Plaintiffs' counsel a
26 declaration under oath which stated the number of compensable work weeks covering the period
27 from August 27, 2005 to May 19, 2010, provided an estimate as to the number of compensable
28 workweeks through July 26, 2010 and explained the process by which the number of
compensable work weeks was determined. The figures set forth in that declaration are consistent
with the final number of 94,540 compensable workweeks.

1 disputes concerning claims were to be resolve. The Court also approved the appointment of
2 CPT Group as the Claims Administrator. The Court also approved the appointment of Plaintiffs
3 as Class Representatives and Plaintiffs' counsel as Class Counsel.

4 14. According to information from the Claims Administrator, on October 14, 2010,
5 pursuant to the terms of the September 13, 2010 Order, the Claims Administrator mailed the
6 notice of class settlement, along with the claim forms and exclusion forms, to 673 class
7 members, whose names and addresses were provided by Defendant. In addition to the mailings,
8 pursuant to Paragraph 30 of the Settlement Agreement, Defendant provided notice via company
9 email to all of its current employee class members. Moreover, notice of the settlement, along
10 with all of the pleadings and court orders in this action, have been and are posted on the websites
11 of Class Counsel.

12 15. On October 25, 2010, Plaintiffs filed a declaration from the Claims Administrator
13 confirming that the class mailings were made on October 14, 2010, and that no issues had arisen
14 with respect to the class mailings.

15 16. The deadline to submit claim forms, exclusions forms and to object to the terms
16 of the Settlement was December 13, 2010. According to information from the Claims
17 Administrator, CPT Group, as of December 22, 2010, a total of 568 valid claims have been
18 received which represent 84.4% of the class members and accounts for 87.5% of the
19 compensable workweeks. There have been eight (8) valid opt-outs and no objections to the
20 settlement.

21
22 **THE AMOUNT OF THE SETTLEMENT IS A FAIR COMPROMISE**
23 **OF VIGOROUSLY CONTESTED, FACTUALLY COMPLEX CLAIMS,**
24 **SUBJECT TO MANY LEGAL UNCERTAINTIES.**

25 17. Throughout this litigation, AT&T disputed liability on the merits of Plaintiffs'
26 claims and also disputed whether class certification was appropriate in this case. There are
27 significant legal uncertainties associated with misclassification, as well as rest and meal period
28

1 claims. In cases such as this one, these claims can be factually complex and require protracted
2 litigation to resolve.

3 18. AT&T has raised numerous defenses to liability and certification, meaning that
4 Plaintiffs faced significant risks if the parties were to engage in protracted litigation. Indeed,
5 Defendant denied and continues to deny any liability or wrongdoing of any kind and further
6 contends that Defendant has complied with the California Labor Code, the California Business
7 and Professions Code, the applicable Industrial Welfare Commission Wage Orders, and similar
8 federal laws, including but not limited to the federal Fair Labor Standards Act. Defendant
9 contends that case law supports its position that the employees at issue are exempt and also that
10 the case would not be certified for a class action due to the predominance of individualized
11 issues.

12 19. Moreover, Defendant contends that the class members were properly designated
13 as exempt. In particular, this case involved application of the administrative exemption, which is
14 still a developing area of the law. For example, a U.S. District Court in California recently found
15 that the administrative exemption applied to employees with arguably similar job duties as the
16 Plaintiffs in this case. *See Heffelfinger v. Electronic Data Systems Corp.*, 580 F.Supp.2d 933
17 (C.D. Cal. 2008 (currently on appeal, Docket No. 08-56319 (9th Cir.)). Defendant contends that
18 the *Heffelfinger* case supports its position that the Class Members were exempt employees.
19 Plaintiffs contend that *Heffelfinger* is readily distinguishable from this case and instead contend
20 that this case is more analogous to *Bothell v. Phase Metrics, Inc.*, 299 F.3d 1120 (9th Cir. 2001)
21 and *Eicher v. Advanced Business Integrators, Inc.*, 151 Cal.App.4th 1363 (2007), in which the
22 employees were determined to be non-exempt. Nonetheless, the uncertainty in the law regarding
23 whether the Class Members were non-exempt is a compelling reason why this settlement is fair
24 and reasonable.

25 20. In addition to uncertainty regarding the Plaintiffs' contention that the Class
26 Members are non-exempt, there is also a great deal of uncertainty regarding whether the case
27 would ultimately be certified as a class action under FRCP 23. Defendant took the position that
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1 the case was not appropriate for class certification because of the predominance of individualized
2 issues. Defendant contends that the duties of Class Members varied greatly, even for Class
3 Members with the exact same job titles, and therefore class certification would be likely denied.
4 Indeed, AT&T maintained that issues with respect to liability and certification required
5 individualized analysis of the nature of the Class Members' work, job duties and responsibilities
6 because AT&T's practices and procedures varied depending upon the department, location,
7 supervisor, job, employee and day. Plaintiffs contend that this case was ripe for certification
8 because each of the Class Members performed similar job duties as the Plaintiffs and there were
9 company-wide policies that affected employees in a similar manner. However, the case law
10 regarding certification is also uncertain and leaves much to the discretion of the District Court.
11 For example, Defendant was expected to rely upon the recent Ninth Circuit decisions of *In re*
12 *Wells Fargo Home Mortgage Litigation*, 571 F.3d 953 (9th Cir. 2009) and *Vinole v Countrywide*
13 *Home Loans, Inc.*, 571 F.3d 935 (9th Cir. 2009) to support its claim that class certification is not
14 appropriate. Plaintiffs contend that these cases are distinguishable and would instead rely on
15 more recent decisions such as *Kamar v. Radio Shack Corp.*, 375 Fed.Appx. 734 (9th Cir. 2010)
16 and *United Steel, Paper and Forestry, Rubber, Manufacturing Energy, Allied Industrial &*
17 *Service Workers International Union, AFL-CIO, CLC v. Conocophillips Company*, 593 F.3d
18 802 (9th Cir. 2010) which support their position regarding class certification.

19 21. In the face of these uncertainties, the parties agreed to a compromise settlement
20 which provides for a claims-made settlement of up to \$17,000,000 (plus the employer's share of
21 payroll taxes) for the 673 Class Members. For the 673 potential class members, this case
22 involves 94,540 compensable work weeks. Under the proposed settlement, each class member
23 will receive approximately \$124 per work week. Based information from the Claims
24 Administrator, CPT Group, the highest payment to a participating class member is estimated to
25 be \$32,708.94, with an average payment of \$18,085. In this case, if the Motion for Final
26 Approval is granted, each Class member will receive approximately \$6,250 for every year
27 worked in the eligible job positions. There is also a strong value in the prompt resolution of this
28

1 case, which will ensure that class members will receive compensation by early 2011. Otherwise,
2 they may have to wait for a potential recovery for several years, given the normal pace of
3 litigation and the likelihood of an appeal of a substantial Plaintiffs' verdict. In light of all of
4 these factors, Plaintiffs' counsel and their clients are of the firm belief that this settlement is in
5 the best interest of the class.

6
7 **THE EXTENT OF INVESTIGATION BY THE PARTIES WAS, AND IS, SUFFICIENT**
8 **TO ALLOW COUNSEL, AND THIS COURT, TO SUPPORT THE SETTLEMENT.**

9 22. Prior to reaching a settlement in this case, Counsel for Plaintiffs engaged in
10 extensive investigation and informal discovery. In particular, the parties engaged in significant
11 and probative informal discovery. AT&T provided documents relevant to assessing potential
12 liability, damages and impediments to class certification. Defendant produced data and
13 documents regarding job titles, work weeks and termination dates and payroll data for each class
14 member. AT&T provided data in the form of spreadsheets which indicated the number of
15 workweeks employees worked, the annual salary for each Class Member and the number of Class
16 Members who were no longer employed by AT&T. AT&T also provided detailed job
17 descriptions for each of the job titles at issue in this case and provided the personnel records for
18 the named Plaintiffs.

19 23. Moreover, Defendant provided the names and contact information for each Class
20 Member to a third party administrator, which enabled surveys to be sent to each and every one of
21 the then 667 putative class members (which included 606 Sr. Analysts and 61 Sr. Database
22 Administrators). Class Counsel developed detailed questionnaires ("surveys") that were sent to
23 the Class Members. Plaintiffs' counsel received survey responses from approximately 130 Sr.
24 Analysts and approximately 30 surveys from Sr. Database Administrators, including extensive
25 written comments by class members.²¹ Additionally, Plaintiffs' counsel called each class member
26

27
28 2. At the time of the mediation, Plaintiffs' counsel had received approximately 160
surveys out of 667 putative class members. Since the mediation, the number of putative class

1 who provided a survey response and conducted interviews with scores of class members. Based
2 on these surveys and interviews, Plaintiffs' counsel compiled a detailed database of information
3 concerning the job duties and work hours of the class members.

4 24. Class Counsel spent significant time reviewing and analyzing Defendant's
5 documents, including job descriptions from the job titles at issue in this case. Class Counsel also
6 analyzed extensive spreadsheets and other data provided by Defendant, including badge swipe
7 data from each of Defendant's California facilities, security event logs from each of Defendant's
8 California facilities, and extensive payroll and employee data as to each and every class member.
9 Moreover, prior to the filing of the motion for preliminary approval, Defendant provided
10 Plaintiffs' counsel with a declaration under penalty of perjury indicating the manner in which
11 Class Members were determined and attesting to the number of Class Members and work weeks
12 involved in the case.

13 25. Plaintiffs' Counsel retained the services of an expert forensic accountant, Philip
14 Gorman, Ph.D, and worked closely with him to analyze the data provided by Defendant AT&T
15 Services, as well as the information contained in approximately 160 survey responses from
16 putative class members. The materials produced by Defendant included information and
17 documents regarding job titles, claimed overtime hours, work weeks and termination dates and
18 payroll data for each class member. The data provided to Dr. Gorman also included survey
19 responses from approximately 130 Sr. Analysts and approximately 30 surveys from Sr. Database
20 Administrators.

21 26. The total number of surveys – 160 – represents approximately 25% of the 673
22 putative class members. Based upon information received from Defendant, approximately 60%
23 of those class members are still employed by Defendant and 40% are former employees.^{3/}
24

25
26 members has increased to 673 and the total number of surveys received by Plaintiffs' counsel has
27 risen to approximately 185. The information in these additional surveys is consistent with the
information in the surveys received prior to the mediation.

28 3. Plaintiffs' counsel has received at least 67 surveys from current employees.

1 Further, according to information obtained from Defendant and from putative class members,
2 AT&T re-classified the Sr. Database Administrator position as “non-exempt” in May 2009. The
3 information obtained from Defendant and the surveys revealed that, apart from the
4 re-classification of Sr. Database Administrators in May 2009, Defendant’s practice during the
5 class period with respect to the classification of Senior Analysts (including Sr. IT Analysts and
6 Sr. OC Test Analysts) as being exempt from overtime requirements is consistent with the
7 practice in effect during the named Plaintiffs’ employment.

8 27. Therefore, at the time the Parties agreed to resolve the case, the Parties had
9 thoroughly investigated and evaluated the factual strengths and weaknesses of this case and
10 engaged in extensive investigation, research and informal discovery. This information was
11 thoroughly analyzed by Class Counsel to assess the merits, class certification issues and
12 damages.

13
14 **THE SETTLEMENT WAS THE RESULT OF ARMS-LENGTH, NON-COLLUSIVE**
15 **NEGOTIATIONS AND IS FAIR, REASONABLE AND IN THE BEST INTERESTS OF**
16 **THE CLASS MEMBERS.**

17 28. The Settlement of this case was the result of diligent efforts to reach settlement of
18 Class Members’ alleged claims by experienced counsel, operating at arms’-length, who have
19 weighed the strengths of the case and examined all issues and risks of litigation and endorse the
20 proposed settlement.

21 29. I am convinced that this settlement is in the best interest of the class based on the
22 negotiations and a detailed knowledge of the issues present in this action. The length and risks of
23 trial and other normal perils of litigation that may have impacted the value of the claims, were all
24 weighed in reaching the proposed settlement. In addition, the affirmative defenses asserted by
25 the Defendant, the prospect of a potential adverse summary judgment ruling, class certification
26 issues, the difficulties of complex litigation, the lengthy process of establishing specific damages
27 and various delays and appeals, were also carefully considered by Class Counsel in agreeing to
28

1 the proposed settlement. Specifically, Class Counsel balanced the terms of the proposed
2 settlement against the probable outcome of liability and the range of recovery at trial.

3 30. Counsel on both sides share the view that this is a fair and reasonable settlement
4 taking into consideration the complexities of the case, the state of the law and the uncertainties of
5 class certification and litigation, and the excellent result for the Class. Given the risks inherent in
6 this litigation and the defenses asserted, this settlement is fair, adequate, reasonable and in the
7 best interests of the Class and one which supports a grant of final approval. Attached hereto as
8 "Exhibit A," is a true and correct copy of the August 23, 2010 declaration of Defense counsel
9 Thomas Geidt.

10
11 **PLAINTIFFS' REQUESTED ATTORNEYS' FEES AND**
12 **COSTS ARE REASONABLE**

13 31. I am of the opinion that Plaintiffs' attorneys' fees request in the amount of
14 \$5,100,000, which is 30% of the total maximum settlement amount (not including the
15 employer's share of payroll taxes), is fair and reasonable given the excellent result achieved on
16 behalf of the Class in this case and taking into account the contingent nature of this case. As
17 demonstrated in Plaintiffs' Motion for Award of Attorneys' Fees and Costs, Claims
18 Administration Expenses and Class Representative Enhancement, the percentage of fees being
19 sought by Plaintiffs is historically within the range of fees typically awarded by federal courts in
20 similar actions.

21 32. In addition to federal courts, California courts have awarded attorneys' fees in the
22 range sought by Plaintiffs. This case alleges California state law causes of action. Thus, the
23 attorneys' fees awarded by California courts for similar class actions are a useful guide as this
24 Court determines what percentage of fees should be awarded to Plaintiffs in this case.

25 33. Class Counsel's request for thirty percent (30%) of the maximum settlement
26 amount is in the mid-range of the historical range of fee awards and is justified under the facts of
27 this case for undertaking complex, risky, expensive, and time consuming litigation on a
28

1 contingent basis under the common fund doctrine.

2
3 **CONTINGENT NATURE OF RECOVERY**

4 34. This class action was filed in August 2009, and for my firm, the
5 fees were wholly contingent in nature, and my firm's attention to this difficult case was
6 undertaken in lieu of work on other cases. The risks in taking on a class action case are
7 enormous. Based on my experience and knowledge of these types of cases, litigating a wage and
8 hour class action through certification, and then trial, takes years and requires the investment of
9 tens, and sometimes hundreds, of thousands of dollars.

10 35. Also, wage and hours laws are still developing and a change in the law always
11 threatens to wipe out Plaintiff's recovery. This is especially true in this case where the main
12 exemption relied upon by Defendant, the administrative exemption, is still under development.
13 Based on these considerations, I respectfully submit that an award of 30% of the maximum
14 settlement should be awarded based on the excellent results achieved in this case.

15
16 **WORK PERFORMED IN FURTHERANCE OF THIS LITIGATION**

17 36. I have expended at least 578.4 hours in furtherance of this litigation. All of the
18 work I performed was necessary in order to achieve the excellent result that occurred in this case.
19 In particular, I first started working on this matter in July 2009. Working in connection with
20 attorneys Tom Falvey and J.D. Henderson, I and my co-counsel V. James DeSimone interviewed
21 numerous former IT employees of AT&T Services about the nature and scope of their job duties
22 to determine whether they were entitled to overtime under federal and California law and the
23 amount of hours they worked overtime. During this time, I also reviewed records from these
24 individuals, as well as documents that we had received. I also did a thorough legal analysis of
25 the applicable laws and regulations regarding exemption from overtime under California and
26 federal law. Based on this extensive investigation, we decided to bring an action on behalf of
27 Senior Analysts at AT&T Services. We later added claims on behalf of Sr. Database
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1 Administrators. I was responsible for drafting the complaint and related documents, and
2 speaking with the Plaintiffs about their potential claims. I have detailed records which set forth
3 the dates and times I performed work on this case, and will provide these to the Court for an *in*
4 *camera* review, so as not to reveal confidential information.

5 37. After we filed and served the lawsuit, I began drafting discovery and initial
6 disclosures in anticipation of the Rule 26 meeting with defense counsel. During our Rule 26
7 discussions, the possibility of mediation was discussed and eventually Defendant agreed to
8 participate in a mediation. I was involved in negotiations with defense counsel regarding the
9 scope of the mediation, the choice of mediator, and the type of informal discovery that Plaintiffs
10 would need to participate in such a mediation. Towards this end, I had extensive discussions and
11 communications with both defense counsel and my co-counsel. Thereafter, I took a lead role in
12 drafting the discovery requests that Plaintiffs felt were needed to participate in a meaningful
13 mediation. During this process, we received voluminous data and documents from Defendant,
14 including information regarding job titles and responsibilities. Both myself and my co-counsel
15 in this case analyzed Defendant's data and records relating to hours worked by employees, the
16 salaries of employees and the size of the class.

17 38. In addition to analyzing Defendant's data and documents, and information fro
18 our clients, I also worked on drafting a survey or questionnaire that was sent to all of the class
19 members. Working with my co-counsel, including attorney Courtney Abrams, I reviewed the
20 data and information from approximately 150 surveys that we received. Working with my co-
21 counsel, we developed a detailed spreadsheet containing information about each of the Class
22 Members who had responded to the surveys, including information about their job duties and the
23 amount of overtime they worked. We also developed follow-up questions. Moreover, Ms.
24 Abrams telephoned each of these Class Members and was able to interview many of them
25 personally to obtain additional information. My firm also retained an expert forensic accountant
26 Philip Gorman, who worked with us (and in particular with our former co-counsel Michael
27 Morrison) to arrive at estimates for the potential damages owed to the class based on information
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1 received from Defendant, as well as information based on the surveys and interviews with Class
2 Members.

3 39. With assistance from my co-counsel, including Mr. Morrison and Mr. DeSimone,
4 I took the lead in drafting a 38 page mediation brief. In addition to reviewing the evidence data
5 and information provided by Defendant and that which was developed by Class Counsel, my co-
6 counsel and I researched the relevant areas of law relating to class certification, liability and
7 damages issues. We spent a significant amount of time researching the various exemptions to
8 California Labor laws. Much of this research was spent analyzing the administrative exemption
9 for employees in the computer industry, and other IT employees. This research was necessary
10 because the administrative exemption, especially relating to employees in the IT industry, is not
11 fully developed and in-flux. In addition, I also did extensive research regarding the law on class
12 certification, including a detailed analysis of the recent Ninth Circuit cases, *In re Wells Fargo*
13 *Home Mortgage Litigation*, 571 F.3d 953 (9th Cir. 2009) and *Vinole v Countryside Home Loans,*
14 *Inc*, 571 F.3d 935 (9th Cir. 2009), including an analysis of all cases from within the Ninth
15 Circuit on the issue of class certification since these decisions were issued. Throughout this
16 process, I was constantly communicating with my co-counsel, who also performed their own
17 analyses of this information. This work was not duplicative, as my co-counsel repeatedly made
18 observations and determinations that added to my analysis. This collaboration was necessary
19 given the fact that there were a significant amount of documents and data to analyze pertaining to
20 numerous employees of Defendant throughout California, as well as significant legal issues.
21 Indeed, I had numerous telephonic and in person conferences with my co-counsel, as well as a
22 plethora of email exchanges with co-counsel. I estimate that I either sent or received over 1,500
23 substantive emails concerning this case. My co-counsel and I devoted substantial time and effort
24 in preparing for the mediation, including the development of power point slides to show to the
25 mediator.

26 40. I, along with my co-counsel Messrs. DeSimone, Falvey and Morrison, participated
27 in the all day mediation on May 12, 2010 in San Francisco before mediator Mark Rudy. After the
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1 parties agreed to the mediator's proposal on May 19, 2010, I worked extensively with my co-
2 counsel and defense counsel in finalizing the Memorandum Agreement, as well as the Joint
3 Stipulation of Class Settlement, class notice, claim form and preliminary approval order. Along
4 with my co-counsel Mr. DeSimone and Mr. Falvey, I traveled to San Francisco for the August 4,
5 2010 preliminary approval hearing, for which we had extensively prepared. After the August 4,
6 2010 hearing, I took the lead in drafting the documents and revisions to the settlement agreement,
7 class notice, claim form and preliminary approval order that were requested by the Court. In
8 addition, along with my co-counsel, I researched the issues raised by the Court during the August
9 4, 2010 hearing which were addressed in our subsequent brief to the Court. Once preliminary
10 approval was granted, I, along with my co-counsel, devoted substantial time and effort to ensure
11 that the highest number of Class members submitted claim forms and participated in the
12 settlement. I was responsible for preparing most of the final approval papers filed in this action
13 and worked with the Defendant's counsel and my co-counsel in preparing the materials for the
14 Final Approval Hearing.

15 41. In addition to this work, I also spent time working with CPT Group, the
16 Claims Administrator, concerning issues relating to the administration of the claims. In
17 particular, there were several disputes from Class Members concerning the number of
18 workweeks and I reviewed documentation submitted by Class Members concerning their
19 disputes and communicated with certain class members on these issues. In addition, I and my co-
20 counsel were also involved in attempting to resolve disputes concerning persons who believe that
21 they were excluded from the Class. Pursuant to terms of the Settlement Agreement, counsel for
22 the parties are required to attempt to resolve such disputes informally. I have been working with
23 defense counsel to resolve these disputes, and if there are any disputes which cannot be resolved
24 informally, the parties will submit such disputes to the Court for resolution. In addition, I
25 understand that there are two (2) late claims and I will work with defense counsel to resolve the
26 issue of whether such claims will be paid. I also have spoken with class members who had
27 questions concerning the case and the settlement since the October 14, 2010 mailing.
28

1 42. I anticipate that I will continue to devote substantial time on this case to
2 prepare for the Final Approval Hearing and to work with my co-counsel and defense counsel to
3 resolve any remaining disputes or to respond to any inquires from Class Members or the Court.
4

5 **HOURLY RATE AND LODESTAR**

6 43. My current hourly rate is \$600.00. I believe this hourly rate to be justified in light
7 of my experience and the excellent results I have achieved in the past, as detailed above, as well
8 as based on the attorneys' fees rates awarded to attorneys with similar experiences and
9 backgrounds as I in other cases, as detailed in the declarations of Barrett S. Litt, Randy Rennick
10 Doug Silverstein, and Matthew Righetti.

11 44. My lodestar to date is on this case is \$347,040 (578.4 hours x \$600).
12

13 **COSTS**

14 45. In total, my office has incurred an aggregate of \$23,587.89 in unreimbursed
15 costs and expenses in prosecuting this case. Over the past 17 months, my office has incurred
16 expert costs, mediation costs, travel costs, filing fees, discovery and computer research costs,
17 photocopies, faxes, telephone charges, and postage. All of the categories of costs and expenses
18 sought by Plaintiffs are typically billed to a client, and were necessary to bring this case to
19 closure. Attached hereto as "Exhibit B" is true and correct copy of the itemization of costs
20 incurred to date by my firm. In addition, Plaintiffs also seek reimbursement of the claims
21 administration expenses incurred by Claims Administrator CPT Group in the amount of
22 \$20,000. See Declaration of Julie Green, ¶ 16.
23

24 **THE CLASS REPRESENTATIVE ENHANCEMENTS REQUESTED HEREIN ARE**
25 **REASONABLE**

26 46. The enhancement awards being sought here are justified by the level of
27 participation of the Class Representatives. The Class Representatives were active participants in
28

1 this litigation. They provided Class Counsel with valuable information regarding (1) the job
2 duties at issue in this case necessary in support Plaintiffs' contention that non-exempt , (2)
3 AT&T's time keeping practices and policies; (3) the hours worked by employees, including meal
4 and rest periods.

5 47. The enhancement awards combined represent less than .05% of the Maximum
6 Payout amount.

7 In light of the above, Class Counsel respectfully request that the Motion for Final
8 Approval, and concurrently filed Motion for Attorneys' Fees and Costs be granted.

9
10 I declare under penalty of perjury that under the laws of the State of California and the
11 United States of America that the foregoing is true and correct.

12
13 Executed this 22nd Day of December, 2010 in Venice, California.

14
15
16 

17
18 Michael D. Seplow

EXHIBIT A

1 J. AL LATHAM, JR. (State Bar # 71605) allatham@paulhastings.com
2 PAUL, HASTINGS, JANOFSKY & WALKER LLP
3 Twenty-Fifth Floor
4 515 South Flower Street
5 Los Angeles, CA 90071
6 Telephone: (213) 683-6000
7 Facsimile: (213) 627-0705

8 THOMAS E. GEIDT (State Bar # 80955) tomgeidt@paulhastings.com
9 RISHI N. SHARMA (State Bar # 239034) rishisharma@paulhastings.com
10 PAUL, HASTINGS, JANOFSKY & WALKER LLP
11 Twenty-Fourth Floor
12 55 Second Street
13 San Francisco, CA 94105
14 Telephone: (415) 856-7000
15 Facsimile: (415) 856-7100

16 Attorneys for Defendant,
17 AT&T SERVICES, INC.

18 UNITED STATES DISTRICT COURT
19 NORTHERN DISTRICT OF CALIFORNIA

20 DUANE WATERS, DEBRA TURNER, and
21 RUDY FAJARDO, on behalf of themselves,
22 all others similarly situated and the general
23 public,

24 Plaintiffs,

25 vs.

26 AT&T SERVICES, INC., (formerly SBC
27 Services, Inc.) and DOES 1 through 10,

28 Defendants.

CASE NO. 3:09-CV-03983 BZ

**DECLARATION OF THOMAS E. GEIDT
IN SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Hon. Bernard Zimmerman
Courtroom G
Under Submission

1 I, Thomas E. Geidt, declare:

2 1. I am an attorney with the firm of Paul, Hastings, Janofsky & Walker LLP, the
3 attorneys of record for Defendant AT&T Services, Inc. in this action. I have personal knowledge
4 of the facts stated in this declaration and, if called as a witness, could and would competently
5 testify to each of these facts under oath.

6 2. This Declaration is provided in response to the Court's request at the August 4,
7 2010 preliminary approval hearing for further information about the value of Plaintiffs' claims in
8 this action, to assist the Court in deciding whether to grant preliminary approval of the class
9 settlement.

10 3. The principal claim in this case is that Plaintiffs and the putative class
11 members, who were employed by Defendant as Senior IT Analysts, Senior QC Test Analysts, and
12 Senior Database Administrators, were misclassified as exempt from overtime. Plaintiffs'
13 Complaint seeks recovery of overtime pay dating back to August 27, 2005, plus interest, statutory
14 penalties, civil penalties, meal and rest break premiums, pay stub penalties, waiting time
15 penalties, punitive damages, attorneys' fees, and costs.

16 4. Defendant has consistently denied, and still denies, that Plaintiffs and the
17 putative class members were misclassified as exempt. Based on its investigation and discovery,
18 Defendant believes the putative class members have performed high-level computer professional
19 and/or administrative duties that fall squarely within the holding of cases such as *Heffelfinger v.*
20 *Electronic Data Systems Corp.*, 580 F. Supp. 2d 933 (C.D. Cal. 2008) (upholding exempt
21 classification of IT analysts and database administrators whose duties are quite similar to
22 Plaintiffs). Further, Defendant believes that Plaintiffs' claims involve highly-individualized,
23 person-by-person inquiries that are not suitable for class treatment, and thus there is a significant
24 likelihood that any motion for class certification would be denied. Moreover, if the Court were to
25 find that Plaintiffs and the putative class members have been properly classified as exempt, all of
26 Plaintiff's ancillary claims for meal and rest break violations, pay stub penalties, waiting time
27 penalties, conversion, and unfair business practices would automatically fail. For these and other
28

1 reasons, Defendant believes there is a realistic likelihood that if the case were litigated, Plaintiff
2 and the other putative class members would not receive any monetary recovery at all.

3 5. In an overtime misclassification case such as this, it is impossible to quantify
4 the exact dollar value of a plaintiff's claims in any precise way. The law does not require
5 employers to maintain records of the hours worked by exempt employees or the amount of time
6 they devote to meal periods. Therefore, there are no time records that the parties can consult to
7 determine exactly how many overtime hours, if any, the putative class members actually worked.

8 6. It also is impossible to quantify the monetary value of Plaintiff's ancillary
9 claims for meal and rest break violations, pay stub penalties, and waiting time penalties in any
10 precise way. Aside from the absence of time records for meal periods, there is tremendous
11 uncertainty and disagreement as to the proper interpretation of California's meal and rest break
12 laws, including what it means to "provide" a meal period under Labor Code § 512. This
13 uncertainty will persist until the California Supreme Court decides the meal and rest break cases
14 now pending before it in *Brinker Restaurant v. Superior Court*, 165 Cal. App. 4th 25 (2008),
15 *review granted*, 2008 Cal. LEXIS 12467 (2008), and *Brinkley v. Public Storage, Inc.*, 167 Cal.
16 App. 4th 1278 (2008), *review granted*, 87 Cal. Rptr. 3d 674 (2009). California law also contains
17 many uncertainties as to how the various civil and statutory penalty provisions are to be
18 interpreted, and whether and how the various Labor Code penalties can be "stacked" for the same
19 underlying violation, among other issues.

20 7. Nonetheless, before agreeing to settle this case, Defendant and its counsel, with
21 the assistance of a forensic economic consulting firm, Welch Consulting, Inc., extensively
22 analyzed Defendant's potential exposure in the event that Plaintiffs were to prevail on a motion
23 for class certification *and* on a class-wide trial of liability and damages. I and others on our
24 defense team conducted an extensive investigation of the best-available data from secondary
25 sources in an attempt to quantify the amount of potential overtime that Plaintiffs and the putative
26 class members worked. We reviewed and produced to Plaintiffs' counsel various secondary time-
27 tracking records from a software system known as "Webstr," badge swipe records showing the
28 times the employees entered and left their work facilities each day, and records showing the dates

1 and times that the employees were logged onto their computer systems. This data still did not
2 enable us to precisely determine the amount of overtime work they may have performed, and the
3 data is susceptible to different arguments and interpretations. However, Defendant concluded
4 from this data, and from interviews with Company managers and other witnesses, that the number
5 of overtime hours worked by the putative class members likely averaged well below five hours
6 per week, which is considerably less than Plaintiffs contended during our settlement discussions.

7 8. Construed most favorably to Plaintiffs, the available data and other information
8 that we reviewed suggested the possibility that a class-wide recovery of overtime pay, interest,
9 and penalties could fall somewhere in the range of \$40-plus million, and possibly more, *if* the
10 case were to be litigated through trial, a class were to be certified, and Plaintiffs were to prevail at
11 trial. Prior to and during the mediation, Plaintiffs contended that Defendant's exposure was
12 considerably higher than that.

13 9. In negotiating the settlement, Defendant was conscious of the inherent risks of
14 litigation and the risk, however small, that Plaintiffs could prevail on a motion for class
15 certification and present class-wide proof of misclassification at trial, resulting in an award of
16 overtime pay and penalties in a significant, but unpredictable, amount. Defendant was also aware
17 that the *Heffelfinger* case is now on appeal before the Ninth Circuit, and there is a possibility that
18 the District Court's decision could be overturned. Defendant also understood there was a risk of
19 having to pay Plaintiffs' attorneys' fees and costs.

20 10. The parties' gross settlement amount of \$17,000,000, covering approximately
21 671 class members, averages out to \$25,335 per class member, before deducting for attorneys'
22 fees and settlement costs. The estimated net payout of \$11,740,000 averages out to \$17,496 per
23 claimant. Based on their pay levels, we estimate that the latter amount equates to more than two
24 hours of overtime pay per class member for every workweek they worked in the relevant time
25 period covered by the settlement.

26 11. For all the reasons stated above, we believe the proposed settlement represents
27 a very fair and adequate compromise of a highly-disputed claim. We urge the Court to approve it.

1 I declare under penalty of perjury under the laws of the State of California that the
2 foregoing is true and correct.

3 Executed on this 23rd day of August, 2010 at San Francisco, California.
4

5 _____
6 THOMAS E. GEIDT
7 Counsel for Defendant AT&T Services, Inc.
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EXHIBIT B

December 22, 2010

WATERS v AT&T SERVICES**SUMMARY OF COSTS****COURT FILING FEE:**

08/27/09	U.S. District Court- SF	Complaint Filing Fee	350.00
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COURT FILING FEE:	\$ 350.00
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MEDIATION FEE:

05/12/10	Mark S. Rudy	Mediation Fee	2,000.00
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TOTAL MEDIATION FEE:	\$ 2,000.00
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RECORDS:

03/31/10	Pacer Service Center	Records	1.76
09/30/10	Pacer Service Center	Records	41.92

TOTAL RECORDS:	\$ 43.68
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EXPERT FEES:

06/07/10	Phillip Fractor Gorman	Expert Fees	15,403.50
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TOTAL EXPERT FEES:	\$ 15,403.50
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TRANSCRIPT FEES:

08/05/10	Debra L. Pas	Hearing Transcripts	373.75
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TOTAL TRANSCRIPT FEES:	\$ 373.75
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WATERS SUMMARY OF COSTS**PAGE 2****RESEARCH:**

08/31/09	West Payment Center	August 2009 Research	36.39
12/31/09	West Payment Center	December 2009 Research	4.85
02/28/10	West Payment Center	February 2010 Research	36.51
04/30/10	West Payment Center	April 2010 Research	292.01
05/31/10	West Payment Center	May 2010 Research	242.97
07/31/10	West Payment Center	July 2010 Research	5.26
08/31/10	West Payment Center	August 2010 Research	602.82
10/31/10	West Payment Center	October 2010 Research	25.09
11/30/10	West Payment Center	November 2010 Research	43.89
12/15/10	West Payment Center	December 2010 Research	190.13

TOTAL RESEARCH: \$ 1,479.92

MESSENGER:

08/27/09	US Legal Mgmt.	U.S. District Court SF	92.25
09/16/09	US Legal Mgmt.	U.S. District Court SF	53.50
10/08/09	US Legal Mgmt.	AT&T Services, Inc	73.21
10/16/09	Federal Express	Hon. B. Zimmerman	15.87
12/03/09	Federal Express	U.S. District Court	17.21
12/07/09	Federal Express	Hon. B. Zimmerman	17.62
04/06/10	Federal Express	Thomas F.	13.46
04/06/10	Federal Express	Phillip G.	16.14
05/10/10	Federal Express	Thomas F.	22.26
07/15/10	Federal Express	Hon. Benard Zimmerman	18.71
07/26/10	US Legal Mgmt.	U.S. District Court	45.00
08/23/10	Federal Express	Hon. Benard Zimmerman	18.62
08/25/10	Federal Express	Hon. Benard Zimmerman	29.28
09/07/10	Federal Express	Hon. Benard Zimmerman	18.53
09/30/10	Federal Express	Hon. Benard Zimmerman	18.53
10/25/10	Federal Express	Hon. Benard Zimmerman	18.71

TOTAL MESSENGER: \$ 488.90

MILEAGE/PARKING:

05/10/10	Jonathan Cotton	Mileage	2.00
05/12/10	Michael Seplow	Parking	53.00

TOTAL MILEAGE/PARKING: \$ 55.00

WATERS SUMMARY OF COSTS**PAGE 3****TRAVEL:**

05/11/10	Michael Seplow	Airfare	346.80
05/11/10	Michael Seplow	Hotel	258.41
05/11/10	V. James DeSimone	Meal	58.55
05/11/10	V. James DeSimone	Hotel	210.41
05/12/10	V. James DeSimone	Cabs	170.00
05/12/10	Michael Morrison	Airfare	749.40
05/12/10	Michael Morrison	Cabs	152.10
05/12/10	Michael Morrison	Shuttle to Airport	40.00
08/04/10	Michael Seplow	Airfare	191.40
08/04/10	Michael Seplow	Hotel	253.07
08/04/10	Michael Seplow	Meals	63.97
08/04/10	Michael Seplow	Cabs	10.00
08/04/10	V. James DeSimone	Airfare	191.40
08/04/10	V. James DeSimone	Hotel	300.38

TOTAL TRAVEL:**\$ 2,995.89****IN-HOUSE COSTS:**

Postage:	\$4.85
Copies (950 Copies x \$.10 per Copy)=	\$95.00
Scans (591 Scans x \$.05 per Scan)=	\$29.55
Prints (2,196 Prints x \$.10 per Page=	\$219.60

TOTAL COSTS:**\$ 23,539.64**