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

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

17 Plaintiffs,

18 vs.

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

21 Defendants.  
22

**Case No: CV 09-3983 BZ**

**DECLARATION OF MICHAEL D.  
SEFLOW IN FURTHER SUPPORT  
OF MOTION FOR PRELIMINARY  
APPROVAL OF CLASS ACTION  
SETTLEMENT AND PROVISIONAL  
CERTIFICATION OF THE CLASS**

**Under submission  
Courtroom: G**

23  
24 **DECLARATION OF MICHAEL D. SEFLOW**

25 I, Michael D. Seplow declare as follows:

26 1. I am an attorney-at-law and a partner with the firm Schonbrun  
27 DeSimone Seplow Harris & Hoffman LLP (“SDSHH”). I am duly admitted to  
28

1 practice before this Honorable Court and am one of the attorneys of record for  
2 Plaintiffs in this action. I have personal knowledge of the facts set forth herein,  
3 (except where indicated upon information and belief) and if called as a witness,  
4 could and would testify competently thereto. This declaration is being made in  
5 support of Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action  
6 Settlement and Provisional Certification of the Class. I am providing this  
7 declaration in response to the Court's Order of August 5, 2010, and the comments  
8 made by the Court during the August 4, 2010 hearing on the motion for  
9 preliminary approval. In particular, the Court directed the parties to make  
10 changes to the Joint Stipulation of Class Settlement and Release, the Notice of  
11 Class Action Settlement, and the Claim Form. Further, the parties have revised  
12 the proposed Order for Preliminary Approval of Class Action Settlement,  
13 Conditional Class Certification, Approval of Class Notice and Setting of a Final  
14 Fairness Hearing, to address the issues raised by the Court and also to reflect the  
15 August 18, 2010 decision by the United States Court of Appeals for the Ninth  
16 Circuit in *In Re Mercury Interactive Corp. Securities Litigation*, (No. 08-17372)  
17 concerning the deadlines for class members to file objections to a motion for  
18 attorneys fees.

19  
20 2. Attached hereto as Exhibit 1 is a true and correct copy of a revised  
21 version of the Joint Stipulation of Class Settlement and Release Between Plaintiffs  
22 and Defendant, which reflects the change requested and suggested by the Court.  
23 In particular, the following changes have been made from the prior version of this  
24 document:

25 A. In paragraph 25(d), the language has been modified in order to express  
26 more clearly the proposed distribution formula.

27 B. Paragraph 30 has been modified so that the Claims Administrator will  
28

1 have ten (10) calender days from receipt of the class information from Defendant  
2 to mail the class notices, claim forms and exclusion forms to the class members.  
3 In addition, a sentence has been added at the end of Paragraph 30 stating that  
4 Defendant will electronically notify all Class Members who are current employees  
5 of Defendant informing them that they can expect to receive the class notice in the  
6 mail and providing them with a contact person at CPT Group (the Claims  
7 Administrator) for them to contact if they do not receive the notice.

8 C. Paragraph 36 has been changed to reflect a modified and streamlined  
9 procedure for resolving disputes concerning the number of Compensable  
10 Workweeks in a class member's claim form. Under the revised procedure, counsel  
11 for both sides will attempt to resolve any such disputes and if they are unable to do  
12 so, the Court (rather than the Claims Administrator) will be the final arbiter of any  
13 such disputes. The parties propose that each side be allowed to submit a five page  
14 memorandum and supporting documentation to the Court in connection with any  
15 such disputes.

16 D. Paragraph 39, regarding objections to the settlement, has been modified  
17 to provide that the Court will determine whether a class member may be heard at  
18 the final approval hearing in the event that such person did not provide notice in  
19 his or her objection statement. Further, this paragraph has also been modified to  
20 provide that class members may submit objections to Plaintiffs' counsel's request  
21 for attorneys fees up to 21 days before the hearing on the motion for attorneys  
22 fees.

23 E. Paragraph 40 has been modified to make it clear that Class Members  
24 who do not submit claims forms are not waiving or releasing any claims under the  
25 federal Fair Labor Standards Act ("FLSA").

26 F. In Paragraph 41, a sentence has been added to indicate that the Court  
27 will be the final arbiter with respect to any disputes over whether a person has  
28

1 submitted a valid Claim Form, a valid Exclusion Form, a valid objection, a valid  
2 dispute as to the number of Compensable Workweeks and/or a valid dispute as to  
3 the person's inclusion or exclusion from the list of eligible class members.

4 G. Paragraph 42 has been modified to make it clear that Class Members  
5 who do not submit claims forms or exclusion forms are not waiving or releasing  
6 any claims under the FLSA.

7 H. Paragraph 49 has been modified to make it clear that Class Members  
8 who do not submit claims forms are not waiving or releasing any claims under the  
9 FLSA.

10 I. Paragraph 75 has been modified to provide that Class Counsel shall  
11 provide information concerning the case, including the operative pleadings,  
12 motions for preliminary and final approval and attorneys fees, and Court orders on  
13 their websites and that the Class Notice shall inform class members of the website  
14 addresses to obtain such information.

15  
16 3. Attached hereto as Exhibit 2 is a true and correct copy of a revised  
17 version of the proposed Notice of Class Action Settlement which reflects the  
18 changes requested and suggested by the Court. In particular, the following  
19 changes have made from the prior version of this document<sup>1/</sup>:

20 A. Paragraph E on page 4 of the Class Notice has been modified to make it  
21 clear that Class Members who do not submit claims forms or exclusion forms are  
22

23 1. In addition to the changes suggested or requested by the Court, Paragraph  
24 B on page 4 of the Class Notice has been modified to indicate that participating  
25 class members will receive approximately \$125 per Compensable Workweek. The  
26 prior figure of \$126 per Compensable Workweek was based on August 4, 2010 as  
27 the date of preliminary approval. Due to the delay in the preliminary approval, the  
28 number of compensable work weeks in the class, (and the resulting overall  
payments to class members) is expected to increase somewhat while the value per  
work week is now estimated to be approximately \$125 per work week.

1 not waiving or releasing any claims under the FLSA.

2 B. Paragraph F on page 5 of the Class Notice has been modified to indicate  
3 that the Claims Administrator will assist in resolving any disputes (as opposed to  
4 actually resolving such disputes).

5 C. Paragraph G on page 5 of the Class Notice has been modified to make it  
6 clear that Class Members who do not submit claims forms or exclusion forms are  
7 not waiving or releasing any claims under the FLSA.

8 D. Paragraph B on pages 7 and 8 of the Class Notice has been modified to  
9 reflect the revised Dispute Resolution procedure described above.

10 E. Paragraph C on pages 8 and 9 of the Class Notice has been modified to  
11 provide that class members may submit objections to Plaintiffs' counsel's request  
12 for attorneys fees up to 21 days before the hearing on the motion for attorneys  
13 fees. This paragraph has also been modified to state that objections shall be sent  
14 to the Clerk of the Court and also send to only one of the law firms representing  
15 Plaintiffs. This paragraph has also been modified so that persons who submit  
16 objections are not required to provide the court with their date of birth.

17 F. Paragraph VI on pages 11 and 12 of the Class Notice has been modified  
18 to inform Class Members that the pleadings and other information about the  
19 settlement are available on class counsels' websites.

20  
21 4. Attached hereto as Exhibit 3 is a true and correct copy of a revised  
22 version of the Claim Form which reflects the changes requested by the Court. In  
23 particular, on Page 3 regarding a "Challenge" to the number of Compensable  
24 Workweeks, the document has been modified to indicate that the Court will make  
25 the final determination as to any such challenges.  
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# **EXHIBIT 1**

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*(Counsel of Record listed  
on next page)*

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

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

Plaintiffs,

vs.

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

Defendants.

CASE NO. 3:09-CV-03983 BZ

**JOINT STIPULATION OF CLASS  
SETTLEMENT AND RELEASE  
BETWEEN PLAINTIFFS AND  
DEFENDANT**

1 V. JAMES DESIMONE (SBN 119668)  
MICHAEL D. SEFLOW (SBN 150183)  
2 MICHAEL MORRISON (SBN 205320)  
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12 Attorneys for Plaintiffs, DUANE WATERS,  
13 DEBRA TURNER, and RUDY FAJARDO,  
on behalf of themselves, all others similarly  
14 situated and the general public

15  
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24 Attorneys for Defendant,  
25 AT&T SERVICES, INC.

1 Plaintiffs Duane Waters, Debra Turner, and Rudy Fajardo, individually and on  
2 behalf of all others similarly situated, and defendant AT&T Services, Inc. (“Defendant” or  
3 “AT&T”), by and through their respective counsel of record, agree to resolve the above-captioned  
4 case through this Joint Stipulation of Settlement and Release Between Plaintiffs and Defendant  
5 (“Settlement”).

6 I.

7 **DEFINITIONS**

8 The terms below have the following meanings:

9  
10 1. “Action” means the civil action entitled *Duane Waters, Debra Turner, and*  
11 *Rudy Fajardo, on behalf of themselves, all others similarly situated and the general public vs.*  
12 *AT&T Services, Inc. (formerly SBC Services, Inc.) and Does 1 through 10*, filed in the United  
13 States District Court, Northern District of California, Case No. 3:09-CV-03983 BZ.

14 2. “AT&T” or “Defendant” shall mean Defendant AT&T Services, Inc.

15 3. “Class Representatives” or “Plaintiffs” shall mean Plaintiffs Duane Waters,  
16 Debra Turner, and Rudy Fajardo.

17 4. “Court” refers to the United States District Court for the Northern District  
18 of California.

19 5. “Class Counsel” shall mean V. James DeSimone, Michael D. Seplow, and  
20 Michael Morrison of SCHONBRUN DESIMONE SEPLOW HARRIS & HOFFMAN LLP, and  
21 Thomas W. Falvey and J.D. Henderson of the LAW OFFICES OF THOMAS W. FALVEY.

22 6. “Parties” shall mean the Plaintiffs/Class Representatives and Defendant.

23 7. “Class” or “Class Members” include the following persons:

24 All persons who work or worked for AT&T Services, Inc. in  
25 the State of California as Senior Analysts (or Senior IT Analysts or  
26 Senior QC Test Analysts) or Senior Database Administrators, while  
27 classified by the Defendant as exempt from overtime pay  
28 requirements, at any time from August 27, 2005 through the date of  
preliminary approval of the Settlement.

1           8.       “Compensable Workweeks” shall mean all workweeks during which Class  
2 Members received pay for work performed (e.g., were not on leave of absence) while employed  
3 by AT&T Services, Inc. in California in the job titles of Senior Analyst (or Senior IT Analyst or  
4 Senior QC Test Analyst) or Senior Database Administrator while classified as exempt from  
5 overtime pay requirements, at any time from August 27, 2005 through the date of preliminary  
6 approval of the Settlement.

7           9.       “Notice” shall mean the Notice of Pendency of Class Action Settlement  
8 attached as Exhibit “A” hereto, which, following Court approval, will be mailed by the Claims  
9 Administrator to each Class Member explaining the terms of the Settlement and the claims  
10 process.

11           10.      “Claim Form” shall mean Exhibit “B” attached hereto, which, following  
12 Court approval, each Class Member must submit to the Claims Administrator to recover a portion  
13 of the Settlement proceeds.

14           11.      “Exclusion Form” refers to Exhibit “C” attached hereto, which, following  
15 Court approval, Class Members must submit to the Claims Administrator to exclude themselves  
16 from this Settlement.

17           12.      “Final Approval Hearing” means the hearing to be conducted by the Court  
18 to determine whether to finally approve and implement the terms of this Settlement.

19           13.      “Maximum Payment” shall mean the gross sum of Seventeen Million  
20 Dollars (\$17,000,000) payable by Defendant pursuant to this Settlement.

21           14.      “Claims Administrator” shall mean CPT Group, Inc., or an administrator  
22 mutually agreed to by the Parties and approved by the Court, that will perform the duties of:  
23 (i) using the data provided by Defendant to prepare the Claim Forms with the number of  
24 Compensable Workweeks for each Class Member; (ii) mailing the Notice, Claim Forms and  
25 Exclusion Forms to Class Members; (iii) tracking returned Claim and Exclusion Forms; (iv)  
26 sending out cure letters, sending out reminder notices, and making follow-up phone calls to Class  
27 Members as necessary; (v) notifying the Parties of timely and untimely claims; (vi) calculating  
28 the amounts due to each Class Member pursuant to the Settlement; (vii) notifying the Parties of

1 and helping to resolve any disputes regarding claims by the Class Members as set forth in  
2 Paragraph 36 below; (viii) providing settlement payments, along with IRS Forms W-2 and 1099,  
3 to the Class Members who submit timely and valid claims and to the taxing authorities; and (ix)  
4 performing such other duties as are described herein.

5 15. "Settlement Effective Date" shall mean the first day following the last of  
6 the following occurrences:

7 (a) The date or the time to appeal or seek permission to appeal or seek  
8 other judicial review of the entry of Judgment approving the Settlement has expired, with no  
9 appeal or other judicial review having been taken or sought; or

10 (b) If an appeal or other judicial review has been taken or sought, the  
11 date the final Judgment is finally affirmed by an appellate court with no possibility of subsequent  
12 appeal or other judicial review therefrom, or the date the appeal(s) or other judicial review  
13 therefrom are finally dismissed with no possibility of subsequent appeal or other judicial review.

14 **II.**

15 **RECITALS**

16 16. On August 27, 2009, Plaintiffs Duane Waters and Debra Turner  
17 commenced a putative class action against AT&T Services, Inc. in the United States District  
18 Court, Northern District of California, Case No. 3:09-CV-03983 BZ ("the Action"). On  
19 September 16, 2009, Plaintiffs filed a First Amended Complaint ("Complaint"), adding another  
20 named plaintiff, Rudy Fajardo. Plaintiffs allege that they and the members of the putative class  
21 were misclassified as exempt from federal and state overtime laws and not paid compensation for  
22 overtime hours they worked, including interest and penalties. Plaintiffs further allege that  
23 Defendant failed to provide meal periods, failed to authorize and permit rest periods, failed to  
24 provide proper itemized earnings statements, and failed to pay all wages due at time of  
25 termination, as required by California law. The Complaint further alleges that Defendant's pay  
26 practices constituted the tort of conversion under California common law and also constituted  
27 unfair business practices under California Business & Professions Code § 17200.  
28



1 Class Counsel, plus reasonable litigation costs (estimated to be \$25,000); (2) up to \$25,000 in  
2 service payments to each of the Class Representatives, Duane Waters, Debra Turner, and Rudy  
3 Fajardo; (3) the reasonable costs of the Claims Administrator to administer the Settlement,  
4 currently estimated to be \$25,000; (4) \$35,000 to the State of California Labor and Workforce  
5 Development Agency (“LWDA”); and (5) the “Remainder” of up to \$11,740,000 to pay the  
6 timely and valid claims of the Class Members. This Settlement does not establish a fund from  
7 which claims will be paid.

8 (b) The Remainder of the Maximum Payment available to pay the  
9 timely and valid claims of the Class Members, pursuant to the formula described below, will  
10 result in a complete distribution of that portion, assuming that all Class Members participate in  
11 the distribution. If fewer than all Class Members participate in the distribution, the total amount  
12 paid by Defendant will be less than the Maximum Payment. In no event shall Defendant be  
13 responsible for paying more than the Maximum Payment of Seventeen Million Dollars, plus the  
14 employer’s portion of payroll taxes.

15 21. Attorneys’ Fees: Plaintiffs request, and Defendant does not oppose, an  
16 award of attorneys’ fees of thirty percent (30%) of the Maximum Payment (or \$5,100,000) to  
17 compensate Class Counsel for all of the work already performed in this case and all work  
18 remaining to be performed in documenting the Settlement, securing Court approval of the  
19 Settlement, administering the Settlement, ensuring that the Settlement is fairly administered and  
20 implemented, and obtaining dismissal of the Action. The Parties agree that a reduction by the  
21 Court in the attorneys’ fees awarded to Class Counsel is not a basis for rendering the entire  
22 Settlement voidable or unenforceable.

23 22. Costs: Plaintiffs request, and Defendant does not oppose, payment to Class  
24 Counsel of their reasonable litigation costs, in an amount estimated to be \$25,000, from the  
25 Maximum Payment for costs and expenses incurred by Class Counsel in prosecuting the Action  
26 and implementing the terms of the Settlement. The Parties agree that a reduction by the Court in  
27 the litigation costs awarded to Class Counsel is not a basis for rendering the entire Settlement  
28

1 voidable or unenforceable. Defendant will issue Class Counsel an IRS Form 1099 for their  
2 attorneys' fees and costs.

3           23.     Service payments to Class Representatives: Subject to Court approval and  
4 the execution of a general release in favor of Defendant (as described more fully below),  
5 Defendant agrees to pay to each of the Class Representatives, Duane Waters, Debra Turner, and  
6 Rudy Fajardo, a service payment in the amount of \$25,000, to be taken from the Maximum  
7 Payment, as an enhancement for their service as Class Representatives, in addition to any  
8 payment they may otherwise receive as Class Members. Defendant will not oppose Plaintiffs'  
9 request for service payments in this amount. The Parties agree that a reduction by the Court in  
10 the Class Representatives' requested service payments is not a basis for rendering the entire  
11 Settlement voidable or unenforceable. Defendant will issue an IRS Form 1099 for these Class  
12 Representative service payments. Duane Waters, Debra Turner, and Rudy Fajardo will each be  
13 responsible for correctly characterizing this compensation for tax purposes and for paying any  
14 taxes owing on said amount.

15           24.     Payment to Labor Workforce and Development Agency: Defendant agrees  
16 to pay Thirty-Five Thousand Dollars (\$35,000) from the Maximum Payment to the LWDA  
17 pursuant to the Labor Code Private Attorneys General Act (the "PAG Act"), Cal. Lab. Code  
18 § 2699 *et seq.*, to cover any and all claims for civil penalties that were or could have been brought  
19 in this Action.

20           25.     Distribution to Class Members:

21           (a)     Submission of Claim Forms. Defendant agrees to pay only those  
22 Class Members who submit timely and valid Claim Forms. To be timely, the Claim Forms must  
23 be submitted by the deadline indicated on the Notice and Claim Forms. To be valid, Claim Forms  
24 must be completed in full, signed under penalty of perjury, and returned to the Claims  
25 Administrator by the deadline.

26           (b)     Calculation of Remainder. After deductions of \$5,100,000 for  
27 attorneys' fees, approximately \$25,000 in litigation costs, \$75,000 for the service payments to the  
28 Class Representatives, an estimated \$25,000 to pay for the services of the Claims Administrator,

1 and the \$35,000 payment to the LWDA (assuming Court approval of these amounts), the  
2 remainder of the Maximum Payment shall be approximately \$11,740,000 (the "Remainder").

3 (c) Compensable Workweeks. Compensable Workweeks will be all  
4 weeks (or portions of weeks) worked by Class Members: (1) while employed by AT&T Services,  
5 Inc. in California in the job titles of Senior Analyst (or Senior IT Analyst or Senior QC Test  
6 Analyst) or Senior Database Administrator, while classified as exempt from overtime pay  
7 requirements, at any time from August 27, 2005 to the date of preliminary approval of the  
8 Settlement. Defendant currently estimates that there are 90,915 Compensable Workweeks from  
9 August 27, 2005 through May 19, 2010. In accordance with the Parties' Memorandum of  
10 Agreement, Defendant has furnished Class Counsel with a declaration verifying the number of  
11 Compensable Workweeks through May 19, 2010, explaining the process by which the number of  
12 Compensable Workweeks was determined, and estimating the number of additional Compensable  
13 Workweeks through July 26, 2010.

14 (d) Distribution Formula. The Class Members' distribution amounts,  
15 prior to any tax or payroll deductions, will be calculated by: (1) dividing the Remainder of the  
16 Maximum Payment by the total number of Compensable Workweeks for the entire class. (This  
17 number will constitute the dollar value per Compensable Workweek); and (2) multiplying the  
18 dollar value per Compensable Workweek by the number of Compensable Workweeks worked by  
19 each Class Member who submits a timely and valid claim ("Participating Class Members").

20 (e) Tax Allocation: The Parties agree that 50% of all payments to  
21 Participating Class Members will be treated as subject to W-2 reporting. Therefore, normal  
22 payroll taxes and withholdings will be deducted pursuant to state and federal law, and all required  
23 payroll contributions will be made on these amounts. Defendant will pay its employer portion of  
24 payroll taxes and withholdings (FICA and FUTA) on these amounts, and the employer payments  
25 of FICA and FUTA will not be deducted from the payments made to the Participating Class  
26 Members. The other 50% of the payments made to the Participating Class Members represents  
27 interest and penalties sought in this Action, and Participating Class Members will be issued an  
28 IRS Form 1099 for that portion of their payments. Defendant will not make any payroll or tax

1 withholdings on this portion of the settlement payments. The Participating Class Members will  
2 be responsible for correctly characterizing this compensation for tax purposes and paying any  
3 taxes owing on said amounts.

4 (f) Settlement Payment Due Date: Within twenty (20) calendar days  
5 after the Settlement Effective Date, the Claims Administrator shall mail the settlement payments  
6 to the Participating Class Members, the enhancement payments to the Class Representatives, and  
7 the payment of \$35,000 to the LWDA. At that time, the Claims Administrator also shall make  
8 the payment for Class Counsel's approved attorneys' fees and costs.

9 **IV.**

10 **CLAIMS ADMINISTRATOR**

11 26. CPT Group, Inc. ("CPT") will serve as the Claims Administrator for this  
12 Settlement, subject to the Court's approval, unless the Parties mutually agree on the appointment  
13 of a different Claims Administrator. CPT has estimated that all necessary settlement  
14 administration duties will not exceed \$25,000. All settlement administration costs shall be taken  
15 from the Maximum Payment.

16 27. Among its other duties as described elsewhere herein, the Claims  
17 Administrator shall provide counsel for all parties with a weekly report showing the number of  
18 claims received, including any opt-outs and objections. The weekly report shall also provide  
19 counsel with the approximate cost to date for the claims administration. Twenty-one (21) days  
20 prior to the deadline to submit the Claim Forms, the Claims Administrator shall send a reminder  
21 notice to all Class Members who have not yet submitted Claim Forms. Within fifteen (15) days  
22 prior to the deadline to submit Claim Forms, the Claims Administrator will attempt to contact by  
23 telephone any Class Members who still have not submitted Claim Forms by that date.

24 **V.**

25 **MOTION FOR PRELIMINARY APPROVAL**

26 28. Promptly upon the execution of this Settlement, the Parties shall file a joint  
27 motion for preliminary approval of the Settlement. Specifically, the Parties will apply to the  
28 Court for the entry of an Order:

- 1 (a) Scheduling a fairness hearing on the question of whether the  
2 proposed Settlement should be approved as fair, reasonable and adequate as to the Class;
- 3 (b) Approving as to form and content the proposed Notice to the Class;
- 4 (c) Approving as to form and content the proposed Claim Form and  
5 instructions for Class Members;
- 6 (d) Approving as to form and content the proposed Exclusion Form;
- 7 (e) Directing the mailing of the Notice, the Claim Form and the  
8 Exclusion Form by first-class mail to the Class Members;
- 9 (f) Preliminarily approving the Settlement;
- 10 (g) Preliminarily certifying the Class for purposes of Settlement only;  
11 and
- 12 (h) Approving V. James DeSimone, Michael D. Seplow, Michael  
13 Morrison, SCHONBRUN DESIMONE SEPLOW HARRIS & HOFFMAN LLP, Thomas W.  
14 Falvey, J.D. Henderson, and the LAW OFFICES OF THOMAS W. FALVEY as Class Counsel;  
15 Duane Waters, Debra Turner, and Rudy Fajardo as Class Representatives; and CPT as the Claims  
16 Administrator.

17 VI.

18 NOTICE TO THE CLASS

19 29. Within twenty (20) calendar days following the Court's entry of its Order  
20 Granting Preliminary Approval of the Settlement, to the extent practicable, Defendant will  
21 provide to the Claims Administrator the names, last known addresses, last known telephone  
22 numbers, and Social Security numbers of the Class Members, along with data indicating the  
23 number of Compensable Workweeks for each Class Member. This data shall be based on  
24 Defendant's payroll and other business records and shall be provided in a format acceptable to the  
25 Claims Administrator. Defendant will consult with the Claims Administrator prior to the  
26 production date to ensure that the format of the database will be acceptable to the Claims  
27 Administrator. The Claims Administrator will not share the identity of individual Class Members  
28 with the Class Representatives or Class Counsel, except as provided otherwise herein.





1 claim. Defendant's Counsel and Class Counsel shall then attempt to informally resolve the  
2 disputed claim, in collaboration with the Claims Administrator.

3 (3). If Defendant's Counsel and Class Counsel cannot resolve the dispute informally  
4 within 20 days of notice of the disputed claim by the Claims Administrator, the dispute shall be  
5 submitted to the Court for a resolution.

6 (4). The Parties propose that the Court utilize the following method for resolving disputed  
7 claims: Each side shall submit a memorandum of not more than five (5) pages, along with any  
8 supporting declarations or documentation. The Court shall then make a binding determination of  
9 the disputed claim.

10 (5). In the event of a final rejection by the Court of a disputed claim, the claimant shall  
11 have the right to opt out of the Settlement and pursue his or her own individual case, by  
12 submitting an Exclusion Form within the deadline for submitting such claims or within ten (10)  
13 days after notification of the rejection, whichever comes later. The date of the notification is  
14 defined as three business days after the date of mailing by First Class U.S. Mail by the Claims  
15 Administrator or Clerk of the Court. Anyone who opts out of the Settlement may not object to  
16 the Settlement and/or appear at the hearing to raise any objections to the Settlement. Therefore,  
17 any Claimant who withdraws a claim and submits an Exclusion Form after the rejection of his or  
18 her claim for additional workweeks will be deemed to have withdrawn any prior objections that  
19 the Claimant may have submitted in connection with the prior claim.

20 37. The dispute-resolution procedure described in the preceding paragraph  
21 shall also apply to any persons who may believe that they were wrongly excluded from the class  
22 list; provided, however, that any such persons excluded from the class need not to file an  
23 Exclusion Form in order to opt out of the class.

24 38. The Claims Administrator shall be responsible for issuing the settlement  
25 payments to the Class Members and calculating and withholding all required state and federal  
26 taxes. Upon request, the Claims Administrator will file proof of payment with the Court and  
27 provide Defendant and Class Counsel with a copy.

28

**IX.****OBJECTIONS TO THE SETTLEMENT**

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2  
3 39. Class Members who wish to object to the Settlement must submit to the  
4 Clerk of the Court and serve on counsel for the Parties, not later than sixty (60) days after the date  
5 that the Claims Administrator first mails the Notice Packet, a written statement objecting to the  
6 Settlement and setting forth the grounds for the objection. This statement also must indicate  
7 whether the Class Member intends to appear and object to the Settlement at the Final Approval  
8 Hearing. The failure to so indicate will constitute a waiver of the right to appear at the hearing,  
9 unless the Court rules otherwise. A Class Member who does not submit and serve an objection in  
10 the manner and by the deadline specified above will be deemed to have waived all objections and  
11 will be foreclosed from making any objection to the Settlement, whether by appeal or otherwise,  
12 absent a contrary order of the Court. Class Members who wish to object to Class Counsel's  
13 request for attorneys' fees and costs may do so by following the same procedure as described  
14 above, except that such Class Members will be permitted to submit such objections after the date  
15 on which Class Counsel files their motion for attorneys' fees and costs, and up until 21 days  
16 before the date the motion for attorneys' fees and costs is to be heard by the Court.  
17

**X.****REQUESTS TO BE EXCLUDED FROM SETTLEMENT**

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20 40. Eligible Class Members who wish to exclude themselves from the  
21 Settlement ("opt out" of the Settlement) must submit to the Claims Administrator, not later than  
22 sixty (60) days after the date that the Claims Administrator first mails the Notice Packet, a  
23 completed Exclusion Form (Exhibit "C"). Exclusion Forms may be submitted to the Claims  
24 Administrator via U.S. Mail, fax, and/or email. A Class Member who does not complete and  
25 submit a timely Exclusion Form in the manner and by the deadline specified above will  
26 automatically become a Participating Class Member and, if the Court approves the Settlement,  
27 will be bound by all terms and conditions of the Settlement and by the Judgment, regardless of  
28

1 whether he or she submits a Claim Form, except that Class Members who do not submit Claim  
2 Forms shall not be deemed to have waived or released any claims under the FLSA. An eligible  
3 Class Member who timely submits an Exclusion Form will not participate or be bound by the  
4 Settlement or the Judgment in any respect. Persons who submit an Exclusion Request will not be  
5 permitted to file objections to the Settlement or appear at the Final Approval Hearing to voice any  
6 objections to the Settlement.

7           41. If an eligible Class Member completes and submits both a Claim Form and  
8 an Exclusion Form, the Claims Administrator will contact the Class Member and obtain  
9 clarification of the Class Member's intent. In the event that the Claims Administrator cannot  
10 obtain clarification of the Class Member's intent by the time of the Final Approval Hearing, it  
11 will be presumed that the Claim Form is controlling, and such Class Member shall remain a  
12 member of the Class and be bound by the terms of the Settlement. The Claims Administrator will  
13 provide all counsel with the name and contact information of any person who submits both a  
14 Claim Form and an Exclusion Form. The Court will be the final arbiter with respect to any  
15 disputes as to whether a person has filed a valid Claim Form, a valid Exclusion Form, a valid  
16 objection to the Settlement, a valid dispute as to the number of Compensable Workweeks, and/or  
17 a valid dispute as to the person's inclusion or exclusion from the list of eligible Class Members.

18           42. Eligible Class Members who do not submit either a valid and timely Claim  
19 Form or a valid and timely Exclusion Form will be bound by all of the terms of the Settlement  
20 and the release set forth herein, except as to any claims under the FLSA, and any such person  
21 shall not be deemed to have waived or released any claims under the FLSA.

22           43. If more than ten percent (10%) of the Class Members timely submit  
23 Exclusion Forms, Defendant shall have the exclusive right to void this Settlement. The Parties  
24 agree that neither side will encourage opt-outs. Defendant shall make its election within ten (10)  
25 days after the Claims Administrator notifies the parties of the number of valid Exclusion Forms  
26 received, which the Claims Administrator will do within ten (10) days after the deadline for  
27 submission of Exclusion Forms. If the Settlement is voided, neither the Class Representatives nor  
28 Class Counsel shall be liable for any costs of administration, which costs shall be borne by

1 Defendant.

2  
3 **XI.**

4 **ADDITIONAL BRIEFING AND FINAL APPROVAL**

5 44. As soon as practicable following the deadline for the filing of claims, the  
6 Parties will jointly file with the Court a motion for final approval of the Settlement and a  
7 memorandum in support of their motion. Plaintiffs and Class Counsel will separately move for  
8 an award of the Class Representative Payments and Class Counsel's attorney's fees and costs,  
9 together with a memorandum in support of their motion, which Defendant will not oppose.

10 45. At the time the Parties file their motion for final approval of the Settlement,  
11 Class Counsel shall provide the Court with a declaration executed by the Claims Administrator  
12 specifying the due diligence the Claims Administrator has undertaken with regard to the mailing  
13 of the Notice; verifying its settlement administration costs; and reporting on the number of  
14 claims, objections, and opt-outs submitted.

15 46. Not later than five (5) court days before the Final Approval Hearing, the  
16 Parties may file, jointly or separately, a reply in support of their motion for final approval of the  
17 Settlement in the event any opposition to the motion for final approval has been filed. Likewise,  
18 Plaintiffs and/or Class Counsel may file replies in support of their motions for Class  
19 Representative Payments and Class Counsel's attorney's fees and costs in the event any  
20 opposition to their motion for such payments, fees and/or costs has been filed.

21 47. Upon final approval of the Settlement by the Court or after the Final  
22 Approval Hearing, the parties will present a Judgment for the Court's entry, dismissing the  
23 Action with prejudice. After entry of the Judgment, the Court will have continuing jurisdiction  
24 over the Action and the Settlement solely for purposes of enforcing the Settlement, addressing  
25 settlement administration matters, and addressing such post-Judgment matters as may be  
26 appropriate under court rules or applicable law.

27 48. Upon final approval of the Settlement by the Court or after the Final  
28 Approval Hearing, the Parties will submit a proposed Order or Orders:

1 (a) Approving the Settlement, adjudging the terms thereof to be fair,  
2 reasonable and adequate, and directing consummation of its terms and provisions;

3 (b) Approving Class Counsel's application for an award of attorneys'  
4 fees and reimbursement of costs;

5 (c) Approving the Class Representatives' service payments;

6 (d) Certifying the Class for settlement purposes only;

7 (e) Dismissing this Action on the merits and with prejudice and  
8 permanently enjoining all Class Members (other than those who timely filed Exclusion Forms)  
9 from prosecuting against the Released Parties any and all Class Members' Released Claims; and

10 (f) Permanently enjoining the Class Representatives from prosecuting  
11 against the Released Parties any and all Class Representatives' Released Claims.

12 **XII.**

13 **RELEASE OF CLAIMS**

14 49. Claims Released by Class Members. Upon the Court's final approval of  
15 the Settlement, and except as to such rights or claims as may be created by the Settlement, the  
16 Class Representatives and the Class Members (other than those who file Exclusion Forms) hereby  
17 release and discharge AT&T Services, Inc. and its former and present parents, subsidiaries, and  
18 officers, directors, employees, partners, shareholders and agents, and any other successors,  
19 assigns, or legal representatives (collectively, "the Released Parties"), from any and all wage-and-  
20 hour claims of every nature or description related to the allegations in the operative Complaint,  
21 except that Class Members who do not submit Claim Forms shall not be deemed to have waived  
22 or released any claims under the FLSA. These released claims include any and all known or  
23 unknown claims of unpaid wages, including overtime, and payments for alleged meal and rest  
24 period violations, liquidated damages, attorneys' fees and costs, any and all available penalties,  
25 including but not limited to record-keeping penalties, pay stub penalties, minimum wage  
26 penalties, meal and rest period penalties and waiting time penalties, interest, and other claims or  
27 penalties under federal and state wage- and-hour law up to and including the date of final court  
28 approval of this Settlement; except, however, claims under the FLSA are released only by those

1 Class Members who submit Claim Forms pursuant to this Settlement. The claims released by the  
2 Class Members (other than those who submit timely and valid Exclusion Forms) include, but are  
3 not limited to, all claims of the foregoing nature that arise under the California Labor Code;  
4 Business and Professions Code §§ 17200 *et seq.*; the Private Attorneys General Act of 2004  
5 (codified at California Labor Code §§ 2698 through 2699); California Industrial Welfare  
6 Commission Wage Orders; the FLSA; and claims for conversion (collectively, “Class Members’  
7 Released Claims”); provided, however, that Class Members who do not submit claims will not be  
8 releasing claims under the FLSA.

9           50. As to the released claims, the Class Members each waive all rights and  
10 benefits afforded by Section 1542 of the Civil Code of the State of California, and do so  
11 understanding the significance of that waiver. Section 1542 provides: “A general release does  
12 not extend to claims which the creditor does not know or suspect to exist in his or her favor at the  
13 time of executing the release, which if known by him or her must have materially affected his or  
14 her settlement with the debtor.” This Section 1542 waiver applies only to those claims released in  
15 Paragraph 49 and not to any other claims.

16           51. Claims Released by the Class Representatives. In consideration for the  
17 service payments being paid to the Class Representatives, each of the Class Representatives  
18 (Duane Waters, Debra Turner, and Rudy Fajardo), upon the Court’s final approval of the  
19 Settlement, hereby fully and finally releases and discharges the Released Parties from all known  
20 and unknown claims they may have against the Released Parties, of every nature or description  
21 whatsoever, up to the date of the Court’s final approval of the Settlement, in addition to the Class  
22 Members’ Released Claims described in the preceding paragraph. This general release of claims  
23 includes any and all known or unknown contract, tort, statutory, common law, constitutional,  
24 discrimination, public policy, retaliation, wrongful discharge, and other claims of any type  
25 whatsoever, to the fullest extent such claims are releasable by law, arising out of the Class  
26 Representatives’ employment with Defendant, the termination of their employment, and their  
27 other dealings with the Defendant and the Released Parties (collectively, “Class Representatives’  
28 Released Claims”).





1 in evidence in any proceeding, except an action or proceeding to approve, interpret, or enforce its  
2 terms.

3 **XIX.**

4 **FAIR, ADEQUATE, AND REASONABLE SETTLEMENT**

5 61. The Parties agree that the Settlement is fair, adequate, and reasonable, and  
6 will so represent it to the Court. In addition, the Parties may request that mediator Mark Rudy  
7 execute a declaration supporting the Settlement, and the Court may, in its discretion, contact Mr.  
8 Rudy to discuss the Settlement and whether or not the Settlement is fair and reasonable.

9 **XX.**

10 **ENFORCEMENT ACTIONS**

11 62. In the event that one or more of the Parties institutes any legal action,  
12 arbitration, or other proceeding against any other Party or Parties to enforce the provisions of this  
13 Settlement, or to declare rights and/or obligations under this Settlement, the successful Party or  
14 Parties shall be entitled to recover from the unsuccessful Party or Parties reasonable attorneys'  
15 fees and costs, including expert witness fees incurred in connection with any enforcement actions.

16 **XXI.**

17 **NOTICES**

18 63. Unless otherwise specifically provided herein, all notices, demands, or  
19 other communications given hereunder shall be in writing and shall be deemed to have been duly  
20 given as of the third business day after mailing by United States first-class mail, return receipt  
21 requested, addressed as follows:

22  
23 (a) To the Class:  
24 V. James DeSimone, Esq. and Michael D. Seplow, Esq.  
25 SCHONBRUN DESIMONE SEPLOW HARRIS & HOFFMAN, LLP  
26 723 Ocean Front Walk  
27 Venice, CA 90291

28 Thomas W. Falvey, Esq. and J.D. Henderson, Esq.  
LAW OFFICES OF THOMAS W. FALVEY  
301 North Lake Avenue, Suite 800  
Pasadena, CA 91101

1  
2 (b) To Defendant:  
3 Thomas E. Geidt, Esq.  
4 PAUL, HASTINGS, JANOFSKY & WALKER LLP  
5 55 Second Street, 24<sup>th</sup> Floor  
6 San Francisco, CA 94105

7  
8 **XXII.**

9 **CONSTRUCTION**

10 64. The Parties agree that the terms and conditions of this Settlement are the  
11 result of lengthy, intensive arm's-length negotiations between the Parties, and that this Settlement  
12 shall not be construed in favor of or against any Party by reason of the extent to which any Party  
13 or his, her, or its counsel participated in its drafting.

14 **XXIII.**

15 **CAPTIONS AND INTERPRETATIONS**

16 65. Paragraph titles or captions contained in this Settlement are a matter of  
17 convenience and for reference, and in no way define, limit, extend, or describe the scope of this  
18 Settlement or any provision.

19 **XXIV.**

20 **MODIFICATION**

21 66. This Settlement may not be changed, altered, or modified, except in writing  
22 and signed by the Parties, and approved by the Court. This Settlement may not be discharged  
23 except by performance in accordance with its terms or by a writing signed by the Parties.

24 **XXV.**

25 **INTEGRATION CLAUSE**

26 67. This Settlement contains the entire agreement between the Parties relating  
27 to the resolution of the Action, and all prior or contemporaneous agreements, understandings,  
28 representations, and statements, whether oral or written and whether by a Party or such Party's  
legal counsel, are merged in this Joint Stipulation. No rights under this Joint Stipulation may be  
waived except in writing.

1 **XXVI.**

2 **BINDING ON ASSIGNS**

3 68. This Settlement shall be binding upon and inure to the benefit of the Parties  
4 and their respective heirs, trustees, executors, administrators, successors, and assigns.

5 **XXVII.**

6 **CLASS COUNSEL SIGNATORIES**

7 69. It is agreed that because the members of the Class are so numerous, it is  
8 impossible or impractical to have each Class Member execute this Settlement. The Notice,  
9 Exhibit "A," will advise all Class Members of the binding nature of the release. Excepting only  
10 the Class Members who timely submit an Exclusion Form, this Joint Stipulation shall have the  
11 same force and effect as if it were executed by each Class Member.

12 **XXVIII.**

13 **COUNTERPARTS**

14 70. This Joint Stipulation may be executed in counterparts, and when each  
15 Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an  
16 original, and, when taken together with other signed counterparts, shall constitute one Settlement,  
17 which shall be binding upon and effective as to all Parties.

18 **XXIX.**

19 **WAIVER OF APPEALS**

20 71. The Parties agree to waive all appeals from the Court's final approval of  
21 this Settlement, unless the Court materially modifies the Settlement; provided, however, that  
22 Plaintiffs may appeal any reduction in the attorneys' fee award. Any reduction in the award of  
23 attorney's fees, costs, and/or service payments to the Class Representatives will not, however,  
24 constitute a material modification of the Settlement and will not be grounds to void the  
25 Settlement.

1 **XXX.**

2 **CLASS CERTIFICATION**

3 72. The Parties agree that the stipulation for Class Certification is for  
4 settlement purposes only, and if for any reason the Settlement is not approved, the stipulation will  
5 be of no force or effect. The Parties agree that certification for settlement purposes is in no way  
6 an admission that class certification is proper, and that evidence of this stipulation for settlement  
7 purposes only will not be deemed admissible in this or any other proceeding.

8 **XXXI.**

9 **CCP SECTION 384 NOT APPLICABLE**

10 73. The Parties agree that California Code of Civil Procedure Section 384 is  
11 not applicable to this Settlement. The Parties represent that the Maximum Payment is a  
12 settlement amount that takes into account the probability that some or many Class Members, for  
13 various reasons, will not file claims. The Parties recognize that the settlement amount would  
14 have been substantially less if all of it had to be paid. No fund has been created. No obligation to  
15 pay Class Members is created until a valid Claim Form is filed. There is thus no residue. Neither  
16 Plaintiffs nor their counsel shall take, or cause any other person to take, a position before the  
17 Court that California Code of Civil Procedure Section 384 applies to this Settlement.

18 **XXXII.**

19 **NO TAX ADVICE**

20  
21 74. Neither Class Counsel nor defense counsel intend anything contained  
22 herein to constitute legal advice regarding the taxability of any amount paid hereunder, nor shall  
23 it be relied upon as such.

24 **XXVIII.**

25 **PUBLICITY**

26 75. The Parties and their counsel agree that they will not issue any press  
27 releases, initiate any contact with the media, respond to any media inquiry, or have any  
28 communication with the media about this case and/or the fact, amount, or terms of this

1 Settlement; provided, however, that if Class Counsel receive an inquiry from the media after  
 2 preliminary approval of the Settlement is granted, Class Counsel may respond only by stating the  
 3 terms of the Settlement. After the Parties have filed their motion for preliminary approval of the  
 4 Settlement, class counsel shall place factual information regarding the Settlement and the claim  
 5 form procedures on their respective web-sites, including copies of the operative pleadings,  
 6 motions for preliminary and final approval of the Settlement, motion for attorneys' fees, and any  
 7 orders of the Court. The Class Notice shall inform the Class Members that information about the  
 8 Settlement may be obtained on Class Counsel's websites and will provide the web addresses  
 9 where such information may be found. Before the date on which the Parties file their motion for  
 10 preliminary approval, the Parties and their counsel will not initiate any contact with class  
 11 members about the Settlement, except that Class Counsel, if contacted by a class member, may  
 12 answer any questions that the class member may have about the Settlement.

13  
 14 DATED: Aug. 23, 2010 REPRESENTATIVE PLAINTIFF

15 By: *Duane J. Waters*  
 16 DUANE WATERS

17 DATED: \_\_\_\_\_, 2010 REPRESENTATIVE PLAINTIFF

18 By: \_\_\_\_\_  
 19 DEBRA TURNER

20 DATED: \_\_\_\_\_, 2010 REPRESENTATIVE PLAINTIFF

21 By: \_\_\_\_\_  
 22 RUDY FAJARDO

1 Settlement; provided, however, that if Class Counsel receive an inquiry from the media after  
 2 preliminary approval of the Settlement is granted, Class Counsel may respond only by stating the  
 3 terms of the Settlement. After the Parties have filed their motion for preliminary approval of the  
 4 Settlement, class counsel shall place factual information regarding the Settlement and the claim  
 5 form procedures on their respective web-sites, including copies of the operative pleadings,  
 6 motions for preliminary and final approval of the Settlement, motion for attorneys' fees, and any  
 7 orders of the Court. The Class Notice shall inform the Class Members that information about the  
 8 Settlement may be obtained on Class Counsel's websites and will provide the web addresses  
 9 where such information may be found. Before the date on which the Parties file their motion for  
 10 preliminary approval, the Parties and their counsel will not initiate any contact with class  
 11 members about the Settlement, except that Class Counsel, if contacted by a class member, may  
 12 answer any questions that the class member may have about the Settlement.

13 DATED: \_\_\_\_\_, 2010 REPRESENTATIVE PLAINTIFF  
 14  
 15 By: \_\_\_\_\_  
 16 DUANE WATERS

17 DATED: August 23, 2010 REPRESENTATIVE PLAINTIFF  
 18 By: Debra Turner  
 19 DEBRA TURNER

20 DATED: \_\_\_\_\_, 2010 REPRESENTATIVE PLAINTIFF  
 21 By: \_\_\_\_\_  
 22 RUDY FAJARDO

23  
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1 Settlement; provided, however, that if Class Counsel receive an inquiry from the media after  
 2 preliminary approval of the Settlement is granted, Class Counsel may respond only by stating the  
 3 terms of the Settlement. After the Parties have filed their motion for preliminary approval of the  
 4 Settlement, class counsel shall place factual information regarding the Settlement and the claim  
 5 form procedures on their respective web-sites, including copies of the operative pleadings,  
 6 motions for preliminary and final approval of the Settlement, motion for attorneys' fees, and any  
 7 orders of the Court. The Class Notice shall inform the Class Members that information about the  
 8 Settlement may be obtained on Class Counsel's websites and will provide the web addresses  
 9 where such information may be found. Before the date on which the Parties file their motion for  
 10 preliminary approval, the Parties and their counsel will not initiate any contact with class  
 11 members about the Settlement, except that Class Counsel, if contacted by a class member, may  
 12 answer any questions that the class member may have about the Settlement.

13 DATED: \_\_\_\_\_, 2010 REPRESENTATIVE PLAINTIFF  
 14

15 By: \_\_\_\_\_  
 16 DUANE WATERS


17 DATED: \_\_\_\_\_, 2010 REPRESENTATIVE PLAINTIFF  
 18

19 By: \_\_\_\_\_  
 20 DEBRA TURNER

21 DATED: 23 AUG, 2010 REPRESENTATIVE PLAINTIFF  
 22 By: Rudy Fajardo  
 23 RUDY FAJARDO  
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DATED: August 23, 2010 SCHONBRUN DESIMONE SEPLOW HARRIS &  
HOFFMAN, LLP  
LAW OFFICES OF THOMAS W. FALVEY

By:   
V. JAMES DESIMONE  
MICHAEL D. SEPLOW

Attorneys for Plaintiffs, DUANE WATERS,  
DEBRA TURNER, and RUDY FAJARDO,  
on behalf of themselves, all others similarly  
situated and the general public

DATED: \_\_\_\_\_, 2010 AT&T SERVICES, INC.

By: \_\_\_\_\_  
THERESA C. O'LOUGHLIN  
General Attorney and Associate General Counsel

DATED: \_\_\_\_\_, 2010 PAUL, HASTINGS, JANOFSKY & WALKER LLP

By: \_\_\_\_\_  
THOMAS E. GEIDT

Attorneys for Defendant,  
AT&T SERVICES, INC.

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DATED: \_\_\_\_\_, 2010 SCHONBRUN, DESIMONE, SEPLOW, HARRIS &  
HOFFMAN, LLP  
LAW OFFICES OF THOMAS W. FALVEY

By: \_\_\_\_\_  
V. JAMES DESIMONE

Attorneys for Plaintiffs, DUANE WATERS,  
DEBRA TURNER, and RUDY FAJARDO,  
on behalf of themselves, all others similarly  
situated and the general public

DATED: August 23, 2010 AT&T SERVICES, INC.

By: Theresa C. O'Loughlin  
THERESA C. O'LOUGHLIN  
General Attorney and Associate General Counsel

DATED: August 23, 2010 PAUL, HASTINGS, JANOFKY & WALKER LLP

By: Thomas E. Geidt  
THOMAS E. GEIDT

Attorneys for Defendant,  
AT&T SERVICES, INC.

LEGAL\_US\_W # 65019200.4

# **EXHIBIT 2**

IN THE UNITED STATES DISTRICT COURT OF CALIFORNIA  
NORTHERN DISTRICT OF CALIFORNIA

*Waters et al. v. AT&T Services, Inc.*, U.S.D.C, Case No. 3:09-CV-03983 BZ

**NOTICE OF CLASS ACTION SETTLEMENT**

To: All CURRENT and FORMER EMPLOYEES of AT&T SERVICES, INC., who worked in the State of California as Senior Database Administrators, Senior IT Analysts (or Senior Analysts), and Senior QC Test Analysts while classified as exempt from overtime pay requirements at any time from August 27, 2005 to \_\_\_\_\_, 2010.

**PLEASE READ THIS NOTICE CAREFULLY.**

Pursuant to an Order of the United States District Court for the Northern District of California, entered on \_\_\_\_\_, 2010, **YOU ARE HEREBY NOTIFIED AS FOLLOWS:**

A proposed settlement (the "Settlement") has been reached among the parties in this class action pending in the U.S. District Court for the Northern District of California, brought on behalf of all individuals described above (the "Class"). The Court has preliminarily approved the Settlement and conditionally certified the Class for purposes of the Settlement only. You have received this notice because AT&T Services, Inc.'s records indicate that you are a member of the Class. This notice is designed to inform you of how you can make a claim under the Settlement, object to the Settlement, or elect to exclude yourself from the Settlement.

**I. BACKGROUND OF THE CASE**

On August 27, 2009, Plaintiffs Duane Waters and Debra Turner commenced a putative class action against AT&T Services, Inc. ("AT&T") in the United States District Court, Northern District of California, Case No. 3:09-CV-03983 BZ ("the Action"). Plaintiffs later amended their complaint to include another named plaintiff, Rudy Fajardo.

Plaintiffs allege that they and all persons who worked for AT&T in the State of California as Senior Database Administrators, Senior IT Analysts (or Senior Analysts), and Senior QC Test Analysts, while classified as exempt from overtime pay requirements at any time from August 27, 2005 to \_\_\_\_\_, 2010, were misclassified as exempt and not paid compensation for overtime hours they worked, including interest

Page 1 of 12

QUESTIONS? CALL TOLL FREE 1-866-\_\_\_\_\_  
Claim Form Must Be Submitted by \_\_\_\_\_, 2010

and penalties. Plaintiffs also allege that AT&T failed to provide meal periods, failed to authorize and permit rest breaks, failed to provide proper pay statements, and failed to pay all wages due at time of termination, as required by California law.

AT&T filed an Answer to the Complaint on October 28, 2009. AT&T denies any liability or wrongdoing of any kind associated with the claims alleged and contends that, for any purpose other than settlement, this action is not appropriate for class action treatment. AT&T further contends that it has complied with the California Labor Code, the California Business and Professions Code, applicable Industrial Welfare Commission Wage Orders, and all similar federal laws, including but not limited to the federal Fair Labor Standards Act and its regulations.

On May 19, 2010, after good-faith negotiations presided over by a private mediator, the parties reached an agreement to settle the Action pursuant to the terms and conditions of the Settlement.

The Settlement represents a compromise and settlement of highly-disputed claims. Nothing in the Settlement is intended to or will be construed as an admission by AT&T that Plaintiffs' claims in the action have merit or that it has any liability to Plaintiffs or the Class on those claims.

Plaintiffs, AT&T, and their counsel have concluded that the Settlement is advantageous considering the risks and uncertainties to each side of continued litigation. The parties and their counsel have determined that the Settlement is fair, reasonable, and adequate and is in the best interests of all parties.

## **II. SUMMARY OF THE SETTLEMENT**

### **A. Who is included in the Settlement?**

You are a Class Member, and are included in the Settlement, if you worked for AT&T Services, Inc. in the State of California as a Senior Database Administrator, Senior IT Analyst (or Senior Analyst), or Senior QC Test Analyst while classified as exempt from overtime pay requirements at any time from August 27, 2005 to \_\_\_\_\_, 2010.

### **B. What will I receive from the Settlement?**

AT&T will make a settlement payment ("Settlement Payment") to each Class Member who submits a timely and valid claim based on the formula set forth below. If you

submit a timely and valid claim, the Settlement Payment you receive will be reduced by applicable tax deductions and withholdings.

The Settlement calls for the potential payment by AT&T of Seventeen Million Dollars (\$17,000,000) (referred to as the "Maximum Payment" or "Gross Potential Settlement Amount"), as well as the employer's share of payroll taxes. As will be set forth in more detail below, the amount available for Class Members from the \$17,000,000 is estimated at \$11,740,000, calculated as follows:

\$17,000,000	(Gross Potential Settlement Amount)
- 5,100,000	(Plaintiffs' Attorneys' Fees)
- 25,000	(Plaintiffs' Litigation Costs)
- 75,000	(Class Representatives' Service Payments)
- 25,000	(Claims Administrator Fees - Estimate)
- <u>35,000</u>	(Payment to the State of California Labor and Workforce Development Agency)
\$11,740,000	(Net Available to Class or "Remainder")

This total will vary if the Court does not approve the requested amounts for attorneys' fees, litigation costs, or class representatives' service payments, or if the cost of administration is different than estimated.

The approximate \$11,740,000 Remainder of the Maximum Payment will be distributed as follows: Compensable Workweeks will be all workweeks (or portions of weeks) during which Class Members performed work for pay while employed by AT&T in California in the job titles of Senior Database Administrator, Senior IT Analyst (or Senior Analyst), or Senior QC Test, and while classified as exempt from overtime pay requirements, at any time from August 27, 2005 to \_\_\_\_\_, 2010.

The Class Members' Distribution Amount, prior to deductions set forth below, will be calculated by: (1) dividing the Remainder of the Maximum Payment by the total number of Compensable Workweeks for all eligible Class Members, to obtain the value per Compensable Workweek; and (2) multiplying that amount by the number of Compensable Workweeks worked by each Class Member who submits a timely and valid claim. There are approximately \_\_\_\_\_ Compensable Workweeks for the entire class period.

Each Class Member who submits a Claim Form that is completed in its entirety, signed under penalty of perjury, and submitted by the deadline stated on the Claim Form is a

“Participating Class Member” and will receive the pro rata distribution as described above.

The Parties estimate that each Class Member who submits a valid and timely Claim Form will receive approximately \$125 per Compensable Workweek under the settlement formula.

The actual net amount received by each Participating Class Member will be the gross amount reduced by payroll and tax withholding, as follows: 50% of the payment will be treated as wages subject to W-2 reporting and, therefore, normal payroll taxes and withholdings will be deducted pursuant to state and federal law. AT&T will pay its portion of payroll taxes and withholdings, and those amounts will not be deducted from the payments made to Participating Class Members. The remaining 50% will be treated as interest and penalties subject to IRS Form 1099 reporting, and Participating Class Members will be issued an IRS Form 1099 for that portion of their payment as required by law. Participating Class Members will be responsible for correctly characterizing this compensation for tax purposes and paying any taxes owing on this amount.

**C. When will I receive my Settlement Payment?**

The Settlement Payments will be paid approximately twenty (20) calendar days after final court approval of the Settlement and after all rights to appeal or review are exhausted or any appeal or review has been resolved in favor of the Settlement.

**D. What if I do not want to participate in the Settlement?**

You will not be included in the Settlement if you elect not to participate by submitting a signed Exclusion Form that is provided with this Notice, by the deadline and in the manner specified in the form. If you return the Exclusion Form, you will not receive a Settlement Payment or be bound by the terms of the Settlement.

**E. What if I do nothing: do not submit an Exclusion Form and do not submit a Claim Form?**

If you do not timely submit a Claim Form or an Exclusion Form, you will forfeit any rights you would otherwise have to sue AT&T for claims that your rights under California overtime and other wage-and-hour laws have been violated, and you will not receive a Settlement Payment. However, if you do not submit a Claim Form or an Exclusion Form, you will not be waiving any rights that you may have under the federal Fair Labor Standards Act (“FLSA”). If you submit a valid and timely Claim Form, you

will receive a Settlement Payment and will forfeit any rights you would otherwise have to sue AT&T for claims that your rights under California and federal wage-and-hour laws have been violated.

**F. Claims Administrator.**

The Court has appointed CPT Group, Inc., to act as an independent Claims Administrator to process this Settlement and to assist in resolving any disputes concerning a Class Member's eligibility to participate in the Settlement and his or her share of the Settlement proceeds.

**G. Release of Claims.**

The Class Members (other than those who file Exclusion Forms) release and discharge AT&T Services, Inc. and its former and present parents, subsidiaries, and officers, directors, employees, partners, shareholders and agents, and any other successors, assigns, or legal representatives (collectively, "Class Members' Released Parties"), from any and all wage-and-hour claims of every nature or description that relate to the allegations in Plaintiffs' Complaint, except that Class Members who do not submit Claim Forms shall not be deemed to have waived or released any claims under the FLSA. These released claims include any and all known or unknown claims of unpaid wages, including overtime, and payments for alleged meal and rest period violations, liquidated damages, attorneys' fees and costs, and any and all available penalties, including but not limited to recordkeeping penalties, pay stub penalties, minimum wage penalties, meal and rest period penalties, and waiting time penalties, interest, and other claims or penalties under federal and state wage-and-hour law up to and including the date of the final court approval of the Settlement; except, however, claims under the federal Fair Labor Standards Act, as amended ("FLSA"), are released only by those Class Members who submit Claim Forms pursuant to the Settlement. The claims released by the Class Members (other than those who submit timely and valid Exclusion Forms) include, but are not limited to, all claims of the foregoing nature that arise under the California Labor Code; Business and Professions Code §§ 17200 et seq.; the Private Attorneys General Act of 2004 (codified at California Labor Code §§ 2698 through 2699); California Industrial Welfare Commission Wage Orders; the FLSA; and claims for conversion (collectively, "Class Members' Released Claims"); provided, however, that Class Members who do not submit Claim Forms will not be releasing claims under the FLSA.

As to the Class Members' Released Claims, the Class Members each waive all rights and benefits afforded by Section 1542 of the Civil Code of the State of California, and

do so understanding the significance of that waiver. Section 1542 provides: "A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor." This Section 1542 waiver applies only to those claims released in the preceding paragraph and not to any other claims.

#### **H. Class Representatives' Service Payments.**

In addition to their share as Participating Class Members, Plaintiffs Duane Waters, Debra Turner, and Rudy Fajardo will each be paid up to \$25,000, subject to Court approval, for their services as Class Representatives, as well as their willingness to accept the risks of an unsuccessful outcome. These payments will be deducted from the Gross Potential Settlement Amount.

#### **I. Attorneys' Fees.**

Class Counsel will seek approval from the Court for payment of attorneys' fees in the amount of thirty percent (30%) of the Gross Potential Settlement Amount (or \$5,100,000) plus \$25,000 in costs, which, if approved by the Court, will be deducted from the Gross Potential Settlement Amount. Class Counsel believes the amount requested for costs and attorneys' fees is fair and reasonable. AT&T will not oppose Class Counsel's request for these amounts.

#### **J. Costs of Administration.**

The costs of administering the Settlement will be deducted from the Gross Potential Settlement Amount. The Claims Administrator estimates this amount to be approximately \$25,000.

#### **K. Penalty Payment to the Labor and Workforce Development Agency.**

In addition, AT&T will pay \$35,000 to the State of California Labor and Workforce Development Agency, to be deducted from the Gross Potential Settlement Amount, to cover any and all claims for civil penalties that were or could have been sought in the Action.

### **III. PLAINTIFFS AND CLASS COUNSEL SUPPORT THE SETTLEMENT**

Plaintiffs, as Class Representatives, and Class Counsel support this Settlement. Their reasons include the inherent risk of denial of class certification, the risk of a trial on the merits, and the inherent delays and uncertainties associated with litigation. Based on their experience litigating similar cases, Class Counsel believe that further proceedings in this case, including a trial and probable appeals, would be very expensive and protracted. No one can confidently predict how the various legal questions at issue, including the amount of damages, would ultimately be resolved. Therefore, upon careful consideration of all of the facts and circumstances of this case, Class Counsel believe that the Settlement is fair, reasonable, and adequate.

#### **IV. WHAT ARE YOUR RIGHTS AS A CLASS MEMBER?**

##### **A. Participating in the Settlement.**

Plaintiffs, as Class Representatives, and Class Counsel represent your interests as a Class Member. Unless you elect not to participate in the Settlement by timely filing an Exclusion Form, you are a part of the Class, and you will be bound by the terms of the Settlement and any final judgment that may be entered by the Court, and you will be deemed to have released the California wage-and-hour claims described in Paragraph G above against AT&T and the other released parties. If you submit a valid and timely Claim Form, you will receive a Settlement Payment and will forfeit any rights you would otherwise have to sue AT&T for claims (as described in Paragraph G) that your rights under California and federal wage-and-hour laws have been violated. As a member of the Class, you will not be responsible for the payment of attorneys' fees or reimbursement of litigation expenses unless you retain your own counsel, in which event you will be responsible for your own attorneys' fees and costs.

##### **B. Disputes as to Class Members' Compensable Workweeks.**

The Claim Forms enclosed with this Notice list the time periods that you worked in the various Class Positions and the number of your Compensable Workweeks, according to AT&T's records. If you wish to challenge the number of Compensable Workweeks listed on your Claim Form, you may do so by submitting a written challenge to the Claims Administrator, along with the signed Claim Form, by \_\_\_\_\_, 2010 (within thirty (30) days of the date of mailing of this Notice), and by including any supporting evidence or documentation, in accordance with the instructions on the Claim Form. The Claims Administrator will evaluate the evidence you submit and, after reviewing AT&T's records, the Claims Administrator, together with counsel for the parties, will attempt to informally resolve the dispute as to your correct number of Compensable

Workweeks. Unresolved disputes will ultimately be decided by the Court. If your challenge as to the correct number of Compensable Workweeks is ultimately rejected by the Court, you will have the opportunity to opt out of the Settlement by submitting an Exclusion Form by \_\_\_\_\_, 2010, or within 10 days after the Claims Administrator notifies you of the rejection of your challenge, whichever is later. If you dispute the number of Compensable Workweeks, you may consult with Class Counsel.

### **C. Objecting to the Settlement.**

You may object to the terms of the Settlement before final approval by submitting a written notice of your objections in the manner described below. If you timely submit written objections, you may also submit a notice of your intent to appear and object at the final approval hearing, if you wish to do so. If you submit a written objection, you may also submit a Claim Form. If the Court rejects your objection and you have not also submitted a Claim Form, you will not receive a Settlement Payment, but you will be bound by the terms of the Settlement.

To object, you must send a written notice of objection, and also, if you wish, a written notice of your intent to appear and object at the final approval hearing, to the Clerk of the Court and to Counsel at the addresses shown below. **DO NOT TELEPHONE THE COURT OR AT&T'S COUNSEL.** Any written objection and/or notice of your intent to appear at the hearing must state: (1) your full name; (2) your address; (3) your dates of employment and positions held at AT&T Services, Inc. in California; and (4) each specific reason for your objection and any legal support for your position. To be valid and effective, the Court and Counsel must receive any written objections and/or notices of intent to appear at the hearing not later than \_\_\_\_\_, 2010 (within sixty (60) days of the mailing of this Notice). A Class Member who fails to submit a written statement of objections in the manner described above and by the specified deadline will be deemed to have waived any objections and will be foreclosed from making any objection (whether by appeal or otherwise) to the Settlement.

If you wish to object to Class Counsel's request for attorneys' fees and costs under the Settlement, you may do so by following the same procedure as described in the preceding paragraph. However, such objections may be made any time up until 21 days before the date for the hearing on Class Counsel's motion for approval of their attorneys' fees and costs. That hearing is currently scheduled to be held on \_\_\_\_\_, which means the deadline to file objections to the request for attorneys' fees and costs is \_\_\_\_\_.

If you submit an Exclusion Form, you may not submit objections to the Settlement or to Class Counsel's request for attorneys' fees and costs, nor appear at the hearing to present any objections. However, you will have the right to pursue your own claims against AT&T in a separate proceeding.

Send Your Notice of Objections To :  
Clerk of the Court

United States District Court  
Northern District of California  
450 Golden Gate Avenue  
San Francisco, CA 94102

And Also Send Copies of Your Notice to:

**CLASS COUNSEL**

V. James DeSimone, Esq. and Michael D. Seplow, Esq.  
SCHONBRUN DESIMONE SEPLOW HARRIS & HOFFMAN, LLP  
723 Ocean Front Walk  
Venice, CA 90291

**AT&T's COUNSEL**

Thomas E. Geidt, Esq.  
PAUL, HASTINGS, JANOFSKY & WALKER LLP  
55 Second Street, 24th Floor  
San Francisco, CA 94105

**D. Excluding Yourself from the Settlement.**

If you do not wish to participate in the Settlement, you must complete the enclosed Exclusion Form. To be valid, the Exclusion Form must be completed, signed by you under penalty of perjury, and returned to:

AT&T/Waters Claims Administrator  
c/o CPT Group, Inc.  
P. O. Box \_\_\_\_\_

\_\_\_\_\_  
Fax no. \_\_\_\_\_

Email address: \_\_\_\_\_

The Exclusion Form must be mailed, faxed, or emailed, postmarked (if mailed) not later than \_\_\_\_\_, 2010 (within 60 days of the mailing of this Class Notice). A Class Member who fails to submit an Exclusion Form in the manner and by the deadline specified above will be bound by all terms and conditions of the Settlement and the Judgment if the Settlement is approved by the Court, regardless of whether he or she has objected to the Settlement (except that Class Members who do not file Claim Forms will not forfeit their federal claims under the Fair Labor Standards Act)

Any Class Member who submits a complete and timely Exclusion Form will, upon its receipt by the Claims Administrator, no longer be a member of the Settlement Class, will be barred from participating in any portion of the Settlement, and will receive no benefits from the Settlement. Any such person, at his or her own expense, may pursue any claims he or she may have against AT&T.

**DO NOT SUBMIT BOTH AN EXCLUSION FORM AND A CLAIM FORM.**

IF YOU SUBMIT BOTH AND IF THE CLAIMS ADMINISTRATOR IS UNABLE TO CONTACT YOU TO ASCERTAIN YOUR INTENT, THE EXCLUSION FORM WILL BE DEEMED INVALID, THE TIMELY CLAIM FORM WILL BE ACCEPTED FOR PAYMENT PURSUANT TO THE TERMS OF THE SETTLEMENT, AND YOU WILL BE BOUND BY THE TERMS OF THE SETTLEMENT.

**E. Claiming a Share of the Settlement Proceeds.**

To receive your share of the Settlement proceeds, you must sign the enclosed Claim Form and return it in the enclosed pre-addressed, postage-paid envelope, or fax or email the Claim Form, to:

AT&T/Waters Claims Administrator  
c/o CPT Group, Inc.  
P. O. Box \_\_\_\_\_  
\_\_\_\_\_

Fax no. \_\_\_\_\_  
Email address: \_\_\_\_\_

To be valid, the Claim Form must include the last four digits of your social security number and be dated and signed by you under penalty of perjury. The Claim Form must

be mailed, faxed, or emailed, with a postmark (if mailed) of not later than \_\_\_\_\_, 2010 (within 60 days of the mailing of this Class Notice). A Class Member who fails to submit a Claim Form in the manner and by the deadline specified above **will not** receive a share of the Settlement proceeds. If that Class Member also fails to file a valid and timely Exclusion Form, the Class Member will be bound by all terms and conditions of the Settlement and the Judgment if the Settlement is approved by the Court (except as to federal claims under the Fair Labor Standards Act), even though the Class Member did not receive a share of the Settlement proceeds.

## V. FINAL SETTLEMENT APPROVAL HEARING

The Court will hold a final approval hearing in Courtroom G of the United States District Court for the Northern District of California, 450 Golden Gate Avenue, 15th Floor, San Francisco, California 94102, on \_\_\_\_\_, at \_\_\_\_\_, to determine whether the Settlement should be finally approved as fair, reasonable, and adequate. The Court will also be asked to approve Class Counsel's request for costs and attorneys' fees and Plaintiffs' request for service payments as the Class Representatives.

The hearing may be postponed without further notice to the Class. It is not necessary for you to appear at this hearing. If you have given notice of your objection to the settlement, you may appear at the hearing at your option if you have filed a notice of intent to appear by \_\_\_\_\_, 2010.

If the Settlement is not approved by the Court or does not become final for some other reason, the litigation will continue.

## VI. GETTING MORE INFORMATION

The above is a summary of the basic terms of the Settlement. For the precise terms and conditions of the Settlement, you are referred to the detailed Joint Stipulation of Class Settlement and Release between Plaintiffs and Defendant, which will be on file with the Clerk of the Court. The pleadings and other records in this litigation, including the Joint Stipulation of Class Settlement, may be examined at any time during regular business hours in the office of the Clerk, United States District Court, Northern District of California, 450 Golden Gate Ave., San Francisco, CA 94102. In addition, the pleadings and other information about the Settlement will be available for your review on Class Counsel's websites at \_\_\_\_\_. **You may also contact the Claims Administrator at: 1-8 \_\_\_\_\_, or Class Counsel listed below for more information:**

V. James DeSimone, Esq. and Michael D. Seplow  
SCHONBRUN DESIMONE SEPLOW  
HARRIS & HOFFMAN, LLP  
723 Ocean Front Walk  
Venice, CA 90291  
Telephone: (310) 396-0731  
Facsimile: (310) 399-7040  
Email: [vjdesimone@gmail.com](mailto:vjdesimone@gmail.com) and  
[msepLOW@gmail.com](mailto:msepLOW@gmail.com)

Thomas W. Falvey, Esq. and J.D. Henderson,  
Esq.  
LAW OFFICES OF THOMAS W. FALVEY  
301 North Lake Avenue, Suite 800  
Pasadena, CA 91101  
Telephone: (626) 795-0205  
Facsimile: (626) 795-3026  
Email: [thomaswfalvey@gmail.com](mailto:thomaswfalvey@gmail.com) and  
[jdlaw@charter.net](mailto:jdlaw@charter.net)

**IMPORTANT:**

1. **PLEASE DO NOT TELEPHONE THE COURT OR AT&T'S COUNSEL FOR INFORMATION REGARDING THIS SETTLEMENT OR THE CLAIM PROCESS!**
2. **If you move, please send the Claims Administrator your new address. It is your responsibility to keep a current address on file with the Claims Administrator to ensure receipt of your Settlement Payment.**
3. **It is strongly recommended that you keep a copy of the completed claim form and proof of timely submission until after you have received your Settlement Payment.**

# **EXHIBIT 3**

## CLAIM FORM

*Waters v. AT&T Services, Inc.*, Northern District of California Case No. 3:09-CV-03983 BZ

### IF YOU WANT TO RECEIVE MONEY UNDER THIS SETTLEMENT, YOU MUST COMPLETE THIS FORM.

YOU MUST COMPLETE, SIGN, AND MAIL (BY FIRST CLASS U.S. MAIL OR EQUIVALENT), FAX, OR EMAIL THIS CLAIM FORM. IT MUST BE POSTMARKED (IF MAILED), FAXED, OR EMAILED **ON OR BEFORE** \_\_\_\_\_, 2010, ADDRESSED AS FOLLOWS, OR YOU WILL BE INELIGIBLE TO RECEIVE A MONETARY RECOVERY.

<p>MAIL TO:</p> <p>AT&amp;T/Waters Claims Administrator c/o CPT Group, Inc. P.O. Box _____</p> <p>_____</p> <p>Phone number 1-800- _____</p> <p>FAX TO: _____</p> <p>OR EMAIL TO: _____</p>
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### INSTRUCTIONS

1. You must complete, sign and mail, fax, or email this Claim Form in order to be eligible for monetary recovery. You must include the last four digits of your social security number in the space provided below.
2. If you move, please send the Claims Administrator your new address. It is your responsibility to keep a current address on file with the Claims Administrator.

3. If you wish to challenge the employment data below, you must submit your challenge by \_\_\_\_\_.

**YOU MUST COMPLETE ALL PAGES OF THE CLAIM FORM.**

<<Claim Number>>  
 <<Name>>  
 <<Address>>  
 <<City>>, <<State>> <<Zip Code>>

Name/Address Changes, if any:

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

( \_\_\_\_\_ ) \_\_\_\_\_ - \_\_\_\_\_  
 Home Telephone Number

AT&T Services, Inc.'s records show that during the dates set forth below (which are just those between August 27, 2005 and \_\_\_\_\_, 2010), you worked in California and held one or more of the following position(s) while the position(s) was classified as exempt from overtime pay requirements: (1) Senior Database Administrator; (2) Senior Analyst (or Senior IT Analyst); and/or (3) Senior QC Test Analyst.

EMPLOYMENT DATES	POSITION
<<DATES>>	Senior Database Administrator
<<DATES>>	Senior Analyst (or Senior IT Analyst)
<<DATES>>	Senior QC Test Analyst

According to the Company's records, your total number of Compensable Workweeks (the number of workweeks you received pay for work performed within these date ranges) is: \_\_\_\_.

Based on the settlement formula, eligible class members will receive approximately \$\_\_\_\_ per Compensable Workweek. Therefore, the Parties estimate that the gross amount you will receive if you file a claim is \$\_\_\_\_\_.

Note: The amount you receive could be slightly higher or lower than this estimate.

**FLSA CONSENT TO OPT IN**

By submitting this Claim Form, I hereby give my consent to be a party plaintiff in this action pursuant to the Fair Labor Standards Act of 1938, 29 U.S.C. § 216(b).

**CHALLENGE**

**Check one:**

- I do not wish to challenge the dates or number of Compensable Workweeks listed above.
- I wish to challenge the dates and/or number of Compensable Workweeks listed above. I have included with my signed Claim Form a written statement with what I believe are my correct dates during which I met the requirements for Compensable Workweeks. I have also included documentary evidence that supports my claim, and I recognize that my claim will not be reviewed without such evidence. I understand that by submitting this challenge, I hereby authorize the parties and the Claims Administrator to review AT&T Services, Inc.'s records and make a determination based on its records and the records I submitted, subject to final determination by the Court. I understand that this determination may increase or decrease the amount of my settlement share. I understand that such determinations are final and binding. I understand that I may contact Class Counsel regarding any challenge if I wish.

**IF YOU WISH TO CHALLENGE THE DATES OR NUMBER OF COMPENSABLE WORKWEEKS LISTED ABOVE, YOU MUST SUBMIT THIS CHALLENGE, ALONG WITH THE COMPLETED CLAIM FORM, ON OR BEFORE \_\_\_\_\_, 2010 (WITHIN 30 DAYS AFTER THIS FORM WAS MAILED TO YOU).**

**RELEASE OF CLAIMS**

My signature constitutes my full and complete release of AT&T Services, Inc. and its former and present parents, subsidiaries, and officers, directors, employees, partners, shareholders, and agents, and any other successors, assigns, or legal representatives, from any and all wage-and-hour claims of every nature or description related to the allegations in the operative Complaint in *Duane Waters vs. AT&T Services, Inc.*, filed in the U.S. District Court, Northern District of California, Case No. 3:09-CV-03983 BZ. These released claims include any and all known or unknown claims of unpaid wages, including overtime, and payments for alleged meal and rest period violations, liquidated damages, attorneys' fees and costs, any and all available penalties, including but not limited to recordkeeping penalties, pay stub penalties, minimum wage penalties, meal and rest period penalties, and waiting time penalties, interest, and other claims or penalties under federal and state wage-and-hour law up to and including the date of the final court approval of the settlement. This includes, but is not limited to, all claims of the foregoing nature that arise under the California Labor Code; Business & Professions Code §§ 17200 *et seq.*; the Private Attorneys General Act of 2004; the California Industrial Welfare Commission Wage Orders; the Fair Labor Standards Act; and claims for conversion.

**DECEASED OR INCAPACITATED CLASS MEMBERS**

If you are submitting this Claim Form on behalf of a class member who has passed away or become incapacitated, provide details about the capacity in which you are submitting this Claim Form on separate sheets and include them with this completed Claim Form. You will have until \_\_\_\_\_, 2010 to submit a claim on behalf of a deceased class member.

**TAXPAYER IDENTIFICATION NUMBER CERTIFICATION**

**Substitute IRS Form W-9**

Enter the last four digits of your Social Security Number: XXX—XX—

I certify that:

1. The partial social security number shown on this form correctly states the last 4 digits of my taxpayer identification number, **and**
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; **and**
3. I am a U.S. citizen or authorized to work in the U.S.

Note: If you have been notified by the IRS that you are subject to backup withholding, you must cross out item 2 above.

The IRS does not require your consent to any provision of this document other than this Form W-9 certification to avoid backup withholding.

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

Dated: \_\_\_\_\_  
Signature

**YOU MUST COMPLETE ALL PAGES OF THE CLAIM FORM.**

# **EXHIBIT 4**

**REQUEST FOR EXCLUSION FORM**

IN THE UNITED STATES DISTRICT COURT OF CALIFORNIA  
NORTHERN DISTRICT OF CALIFORNIA

*Waters et al. v. AT&T Services, Inc.*, U.S.D.C., Case No. 3:09-CV-03983 BZ

**DO NOT FILL OUT THIS FORM** if you want to be included in this class action settlement and to receive your portion of the Settlement. If you do want to receive your portion of the settlement, you must complete the enclosed Claim Form and return it to the Claims Administrator by mail, fax, or email on or before \_\_\_\_\_, 2010.

**INSTRUCTIONS**

If you do not want to participate in the Settlement, you may “opt out” of the Settlement by returning this Request for Exclusion Form. If you choose to opt out of the Settlement: (a) you will have no right to receive any money under the Settlement; (b) you will not be bound by the Settlement; and (c) you will have no right to object to the Settlement and/or be heard at the final approval hearing.

To opt out, you must sign and return this Request for Exclusion Form to the Claims Administrator, c/o CPT Group, Inc., at the address listed below, and you must return it postmarked (if mailed), faxed, or emailed **no later than \_\_\_\_\_, 2010, to:**

AT&T/Waters Claims Administrator  
c/o CPT Group, Inc.

\_\_\_\_\_  
\_\_\_\_\_  
Phone number 1-800-\_\_\_\_\_  
Fax No. \_\_\_\_\_  
Or email to: \_\_\_\_\_

**OPT OUT SIGNATURE**

By signing this Request for Exclusion Form, I hereby opt out of the lawsuit and the Settlement. By signing this Request for Exclusion Form, I understand that I will have no right to receive any money under the Settlement, and I will have no right to object to the Settlement and/or be heard at the final approval hearing.

Dated: \_\_\_\_\_, 2010

\_\_\_\_\_  
(Signature (under penalty of perjury))

\_\_\_\_\_  
(Typed or Printed Name)

(Address)

\_\_\_\_\_  
(City, State, Zip Code)

