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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.

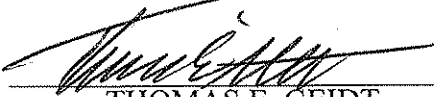
20 10. The parties' gross settlement amount of \$17,000,000, covering approximately
21 671 class members, averages out to \$25,335 per class member, before deducting for attorneys'
22 fees and settlement costs. The estimated net payout of \$11,740,000 averages out to \$17,496 per
23 claimant. Based on 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.
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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

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



THOMAS E. GEIDT
Counsel for Defendant AT&T Services, Inc.