

1 V James DeSimone, SBN 119668  
Michael D. Seplow, SBN 150183  
2 Michael Morrison, SBN 205320  
SCHONBRUN DESIMONE SEPLOW  
3 HARRIS & HOFFMAN, LLP  
723 Ocean Front Walk  
4 Venice, CA 90291  
Telephone: (310) 396-0731  
5 Facsimile: (310) 399-7040

6 LAW OFFICES OF THOMAS W. FALVEY  
THOMAS W. FALVEY, SBN 65744  
7 J.D. HENDERSON, SBN 235767  
301 North Lake Avenue, Suite 800  
8 Pasadena, California 91101  
Telephone: (626) 795-0205

9 Attorneys for Plaintiffs  
10

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

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

16 Plaintiffs,

17 vs.

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

20 Defendants.  
21

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

**NOTICE OF LODGING  
OF EXECUTED SETTLEMENT  
AGREEMENT AND JOINT  
STIPULATION BETWEEN  
PLAINTIFFS AND DEFENDANT**

**Date: August 4, 2010  
Time: 10:00 a.m.  
Courtroom G**

22  
23 TO ALL INTERESTED PARTIES AND THEIR ATTORNEYS OF  
24 RECORD:

25 PLEASE TAKE NOTICE that Plaintiffs hereby lodge the attached executed  
26 Settlement Agreement and Joint Stipulation between Plaintiffs and Defendants,  
27 which has been signed by all parties and their counsel, in support of their  
28

1 unopposed Motion for Preliminary Approval of Class Action Settlement and  
2 Provisional Certification of Class. An unsigned copy of this Settlement Agreement  
3 and Joint Stipulation was included with Plaintiffs' moving papers which were filed  
4 on July, 15, 2010.

5  
6 DATED: July 23, 2010

SCHONBRUN DESIMONE SELOW  
HARRIS & HOFFMAN LLP

7  
8 LAW OFFICES OF THOMAS FALVEY

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11 \_\_\_\_\_  
V. James DeSimone  
Michael D. Seplow  
Attorneys for Plaintiffs

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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. SELOW (SBN 150183)  
2 MICHAEL MORRISON (SBN 205320)  
SCHONBRUN, DESIMONE, SELOW,  
3 HARRIS & HOFFMAN, LLP  
723 Ocean Front Walk, Suite 100  
4 Venice, CA 90291  
Telephone: (310) 396-0731  
5 Facsimile: (310) 399-7040  
Email: vjdesimone@gmail.com  
6 mseplow@aol.com  
mmorrison@sdshh.com

7  
8 THOMAS W. FALVEY (SBN 65744)  
J.D. HENDERSON (SBN 235767)  
LAW OFFICES OF THOMAS W. FALVEY  
9 301 North Lake Avenue, Suite 800  
Pasadena, CA 91101  
10 Telephone: (626) 795-0205  
Facsimile: (616) 795-3096  
11 Email: thomaswfalvey@gmail.com  
hendersonj2004@gmail.com

12  
13 Attorneys for Plaintiffs, DUANE WATERS,  
DEBRA TURNER, and RUDY FAJARDO,  
14 on behalf of themselves, all others similarly  
situated and the general public

15  
16 J. AL LATHAM, JR. (SBN 71605)  
PAUL, HASTINGS, JANOFSKY & WALKER LLP  
515 South Flower Street, Suite 2500  
17 Los Angeles, CA 90071  
Telephone: (213) 683-6000  
18 Facsimile: (213) 627-0705  
Email: allatham@paulhastings.com

19  
20 THOMAS E. GEIDT (SBN 80955)  
RISHI N. SHARMA (SBN 239034)  
PAUL, HASTINGS, JANOFSKY & WALKER LLP  
21 55 Second Street, Suite 2400  
San Francisco, CA 94105  
22 Telephone: (415) 856-7000  
Facsimile: (415) 856-7100  
23 Email: tomgeidt@paulhastings.com  
rishisharma@paulhastings.com

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



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 resolving any disputes regarding claims by the Class Members as set forth in Paragraph 36  
2 below; (viii) providing settlement payments, along with IRS Forms W-2 and 1099, to the Class  
3 Members who submit timely and valid claims and to the taxing authorities; and (ix) performing  
4 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.  
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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, revealing the value per  
17 Compensable Workweek; and (2) multiplying that amount by the number of Compensable  
18 Workweeks worked by each Class Member who submits a timely and valid claim ("Participating  
19 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 agreement, the Claims Administrator's determination on whether to accept or reject the claim will  
2 be final and binding. In the event of a final rejection by the Claims Administrator of a disputed  
3 claim, the claimant shall have the right to opt out of the Settlement and pursue his or her own  
4 individual case, by submitting an Exclusion Form within the deadline for submitting such claims  
5 or within ten (10) days after notification of the rejection, whichever comes later. The date of the  
6 notification is defined as three business days after the date of mailing by First Class U.S. Mail.  
7 Anyone who opts out of the Settlement may not object to the Settlement and/or appear at the  
8 hearing to raise any objections to the Settlement. Therefore, any Claimant who withdraws a  
9 claim and submits an Exclusion Form after the rejection of his or her claim for additional  
10 workweeks will be deemed to have withdrawn any prior objections that the Claimant may have  
11 submitted in connection with the prior claim.

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

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

## 20 21 IX.

### 22 OBJECTIONS TO THE SETTLEMENT

23           39. Class Members who wish to object to the Settlement must file with the  
24 Court and serve on counsel for the Parties, not later than sixty (60) days after the date that the  
25 Claims Administrator first mails the Notice Packet, a written statement objecting to the  
26 Settlement and setting forth the grounds for the objection. This statement also must indicate  
27 whether the Class Member intends to appear and object to the Settlement at the Final Approval  
28 Hearing. The failure to so indicate will constitute a waiver of the right to appear at the hearing.

1 A Class Member who does not file and serve an objection in the manner and by the deadline  
2 specified above will be deemed to have waived all objections and will be foreclosed from making  
3 any objection to the Settlement, whether by appeal or otherwise.

4  
5 X.

6 **REQUESTS TO BE EXCLUDED FROM SETTLEMENT**

7 40. Eligible Class Members who wish to exclude themselves from the  
8 Settlement ("opt out" of the Settlement) must submit to the Claims Administrator, not later than  
9 sixty (60) days after the date that the Claims Administrator first mails the Notice Packet, a  
10 completed Exclusion Form (Exhibit "C"). Exclusion Forms may be submitted to the Claims  
11 Administrator via U.S. Mail, fax, and/or email. A Class Member who does not complete and  
12 submit a timely Exclusion Form in the manner and by the deadline specified above will  
13 automatically become a Participating Class Member and, if the Court approves the Settlement,  
14 will be bound by all terms and conditions of the Settlement and by the Judgment, regardless of  
15 whether he or she submits a Claim Form. An eligible Class Member who timely submits an  
16 Exclusion Form will not participate or be bound by the Settlement or the Judgment in any respect.  
17 Persons who submit an Exclusion Request will not be permitted to file objections to the  
18 Settlement or appear at the Final Approval Hearing to voice any objections to the Settlement.

19 41. If an eligible Class Member completes and submits both a Claim Form and  
20 an Exclusion Form, the Claims Administrator will contact the Class Member and obtain  
21 clarification of the Class Member's intent. In the event that the Claims Administrator cannot  
22 obtain clarification of the Class Member's intent by the time of the Final Approval Hearing, it  
23 will be presumed that the Claim Form is controlling, and such Class Member shall remain a  
24 member of the Class and be bound by the terms of the Settlement. The Claims Administrator will  
25 provide all counsel with the name and contact information of any person who submits both a  
26 Claim Form and an Exclusion Form.



1 Representative Payments and Class Counsel's attorney's fees and costs in the event any  
2 opposition to their motion for such payments, fees and/or costs has been filed.

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

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

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

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

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

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

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

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

22 **XII.**

23 **RELEASE OF CLAIMS**

24 49. Claims Released by Class Members. Upon the Court's final approval of  
25 the Settlement, and except as to such rights or claims as may be created by the Settlement, the  
26 Class Representatives and the Class Members (other than those who file Exclusion Forms) hereby  
27 release and discharge AT&T Services, Inc. and its former and present parents, subsidiaries, and  
28 officers, directors, employees, partners, shareholders and agents, and any other successors,

1 assigns, or legal representatives (collectively, “the Released Parties”), from any and all wage-and-  
2 hour claims of every nature or description related to the allegations in the operative Complaint.  
3 These released claims include any and all known or unknown claims of unpaid wages, including  
4 overtime, and payments for alleged meal and rest period violations, liquidated damages,  
5 attorneys’ fees and costs, any and all available penalties, including but not limited to record-  
6 keeping penalties, pay stub penalties, minimum wage penalties, meal and rest period penalties  
7 and waiting time penalties, interest, and other claims or penalties under federal and state wage-  
8 and-hour law up to and including the date of final court approval of this Settlement; except,  
9 however, claims under the FLSA are released only by those Class Members who submit Claim  
10 Forms pursuant to this Settlement. The claims released by the Class Members (other than those  
11 who submit timely and valid Exclusion Forms) include, but are not limited to, all claims of the  
12 foregoing nature that arise under the California Labor Code; Business and Professions Code §§  
13 17200 *et seq.*; the Private Attorneys General Act of 2004 (codified at California Labor Code  
14 §§ 2698 through 2699); California Industrial Welfare Commission Wage Orders; the FLSA; and  
15 claims for conversion (collectively, “Class Members’ Released Claims”); provided, however, that  
16 Class Members who do not submit claims will not be releasing claims under the FLSA.

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

24           51. Claims Released by the Class Representatives. In consideration for the  
25 service payments being paid to the Class Representatives, each of the Class Representatives  
26 (Duane Waters, Debra Turner, and Rudy Fajardo), upon the Court’s final approval of the  
27 Settlement, hereby fully and finally releases and discharges the Released Parties from all known  
28 and unknown claims they may have against the Released Parties, of every nature or description



1 for, or benefit accrual within, an employee pension benefit plan, employee welfare benefit plan,  
2 or other program or policy sponsored by Defendant or any of its affiliates.

3 **XV.**

4 **PARTIES' AUTHORITY**

5 55. The respective signatories to the Settlement represent that they are fully  
6 authorized to enter into this Settlement and bind the respective Parties to its terms and conditions.

7 **XVI.**

8 **MUTUAL FULL COOPERATION**

9 56. The Parties agree to cooperate fully with each other to accomplish the  
10 terms of this Settlement, including but not limited to executing such documents and taking such  
11 other actions as may reasonably be necessary to implement the terms of the Settlement. The  
12 Parties shall use their best efforts, including all efforts contemplated by this Settlement and any  
13 other efforts that may become necessary by order of the Court, or otherwise, to effectuate the  
14 terms of the Settlement.

15 57. Any dispute concerning the interpretation or implementation of this  
16 Settlement Agreement will be resolved by the Magistrate Judge. Prior to any such resort to the  
17 Court, counsel for the Parties will confer in good faith to resolve the dispute. If the parties are  
18 unable to resolve the dispute themselves, the dispute will be submitted to Mark Rudy for  
19 mediation before being submitted to the Magistrate Judge.

20 58. The parties agree that they will not discourage Class Members from filing  
21 Claim Forms or encourage Class Members to file Exclusion Forms.

22 **XVII.**

23 **NO PRIOR ASSIGNMENTS**

24 59. The Parties represent, covenant, and warrant that they have not directly or  
25 indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any  
26 person or entity any portion of any liability, claim, demand, action, cause of action, or right  
27 released and discharged in this Settlement.

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**XVIII.**

**NO ADMISSION OF LIABILITY**

60. Nothing contained in this Settlement shall be construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part of Defendant. Each of the Parties has entered into this Settlement with the intention to avoid further disputes and litigation with the attendant inconvenience and expenses. This Settlement shall be inadmissible in evidence in any proceeding, except an action or proceeding to approve, interpret, or enforce its terms.

**XIX.**

**FAIR, ADEQUATE, AND REASONABLE SETTLEMENT**

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

**XX.**

**ENFORCEMENT ACTIONS**

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

**XXI.**

**NOTICES**

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

1 (a) To the Class:  
2 V. James DeSimone, Esq. and Michael D. Seplow, Esq.  
3 SCHONBRUN DESIMONE SEPLow HARRIS & HOFFMAN, LLP  
4 723 Ocean Front Walk  
5 Venice, CA 90291

6 Thomas W. Falvey, Esq. and J.D. Henderson, Esq.  
7 LAW OFFICES OF THOMAS W. FALVEY  
8 301 North Lake Avenue, Suite 800  
9 Pasadena, CA 91101

10 (b) To Defendant:  
11 Thomas E. Geidt, Esq.  
12 PAUL, HASTINGS, JANOF SKY & WALKER LLP  
13 55 Second Street, 24<sup>th</sup> Floor  
14 San Francisco, CA 94105

15 **XXII.**

16 **CONSTRUCTION**

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

21 **XXIII.**

22 **CAPTIONS AND INTERPRETATIONS**

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

26 **XXIV.**

27 **MODIFICATION**

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

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**XXV.**

**INTEGRATION CLAUSE**

67. This Settlement contains the entire agreement between the Parties relating to the resolution of the Action, and all prior or contemporaneous agreements, understandings, 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.

**XXVI.**

**BINDING ON ASSIGNS**

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

**XXVII.**

**CLASS COUNSEL SIGNATORIES**

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

**XXVIII.**

**COUNTERPARTS**

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

**XXIX.**

**WAIVER OF APPEALS**

71. The Parties agree to waive all appeals from the Court's final approval of this Settlement, unless the Court materially modifies the Settlement; provided, however, that

1 Plaintiffs may appeal any reduction in the attorneys' fee award. Any reduction in the award of  
2 attorney's fees, costs, and/or service payments to the Class Representatives will not, however,  
3 constitute a material modification of the Settlement and will not be grounds to void the  
4 Settlement.

5 XXX.

6 CLASS CERTIFICATION

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

12 XXXI.

13 CCP SECTION 384 NOT APPLICABLE

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

22 XXXII.

23 NO TAX ADVICE

24 74. Neither Class Counsel nor defense counsel intend anything contained  
25 herein to constitute legal advice regarding the taxability of any amount paid hereunder, nor shall  
26 it be relied upon as such.  
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28 XXVIII.

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**PUBLICITY**

75. The Parties and their counsel agree that they will not issue any press releases, initiate any contact with the media, respond to any media inquiry, or have any communication with the media about this case and/or the fact, amount, or terms of this Settlement; provided, however, that if Class Counsel receive an inquiry from the media after preliminary approval of the Settlement is granted, Class Counsel may respond only by stating the terms of the Settlement. After the Parties have filed their motion for preliminary approval of the Settlement, class counsel may place factual information regarding the Settlement and the claim form procedures on their respective web-sites. Before the date on which the Parties file their motion for preliminary approval, the Parties and their counsel will not initiate any contact with class members about the Settlement, except that Class Counsel, if contacted by a class member, may answer any questions that the class member may have about the Settlement.

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

By: \_\_\_\_\_  
DUANE WATERS

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

By: \_\_\_\_\_  
DEBRA TURNER

DATED: 22 JULY, 2010 REPRESENTATIVE PLAINTIFF

By: Rudy Fajardo  
RUDY FAJARDO

PUBLICITY

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

By: \_\_\_\_\_  
DUANE WATERS

DATED: 7.21.2010, 2010 REPRESENTATIVE PLAINTIFF

By: Debra Turner  
DEBRA TURNER

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

By: \_\_\_\_\_  
RUDY FAJARDO

**PUBLICITY**

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DATED: July 20, 2010 REPRESENTATIVE PLAINTIFF  
By: Duane Waters  
DUANE WATERS

DATED: \_\_\_\_\_, 2010 REPRESENTATIVE PLAINTIFF  
By: \_\_\_\_\_  
DEBRA TURNER

DATED: \_\_\_\_\_, 2010 REPRESENTATIVE PLAINTIFF  
By: \_\_\_\_\_  
RUDY FAJARDO



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DATED: \_\_\_\_\_, 2010 SCHONBRUN, DESIMONE, SEFLOW, 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: July 16, 2010 AT&T SERVICES, INC.

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

DATED: July 22, 2010 PAUL, HASTINGS, JANOFSKY & WALKER LLP

By: Thomas E. Geidt  
THOMAS E. GEIDT

Attorneys for Defendant,  
AT&T SERVICES, INC.

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