

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 September 13, 2010.

PLEASE READ THIS NOTICE CAREFULLY.

Pursuant to an Order of the United States District Court for the Northern District of California, entered on September 13, 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 September 13, 2010, were misclassified as exempt and not paid compensation for overtime hours they worked, including interest 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 September 13, 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 & 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 Analyst, and while classified as exempt from overtime pay requirements, at any time from August 27, 2005 to September 13, 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 94,500 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 \$124 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 **November 29, 2010** (within forty five (45) 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 **December 13, 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 (except that Class Members who do not file Claim Forms will not forfeit their federal claims under the Fair Labor Standards Act).

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 December 13, 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 February 9, 2011 at 1:30 PM which means the deadline to file objections to the request for attorneys' fees and costs is January 19, 2011.

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
Waters v. AT&T, C09-3983
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 & HARRISON, LLP
723 Ocean Front Walk
Venice, CA 90291

AT&T's COUNSEL

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

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

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.
16630 Aston
Irvine, CA 92606
Fax No. (949) 419-3446*
Email address: WatersVsATT@cptgroup.com

The Exclusion Form must be mailed, faxed, or emailed, postmarked (if mailed) not later than **December 13, 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.
16630 Aston
Irvine, CA 92606
Fax No. (949) 419-3446*
Email address: WatersVsATT@cptgroup.com

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 **December 13, 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 February 9, 2011, at 1:30 PM, 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 **December 13, 2010**, or, in the case of an objection to the request for attorneys' fees and costs, by **January 19, 2011**, or if the Court otherwise permits you to appear.

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 www.Falveylaw.com, and www.losangelesemploymentlawyer.com. **You may also contact the Claims Administrator at: 1-888 885-3961 or Class Counsel listed below for more information:**

V. James DeSimone, Esq. and Michael D. Seplow
SCHONBRUN DESIMONE SEFLOW
HARRIS HOFFMAN & HARRISON,
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Venice, CA 90291
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Facsimile: (310) 399-7040
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Thomas W. Falvey, Esq. and J.D. Henderson,
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Facsimile: (626) 795-3026
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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.**