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

15 DUANE WATERS, DEBRA TURNER)
16 and RUDY FAJARDO, on behalf of)
17 themselves, all others similarly situated)
and the general public,)
18 Plaintiffs,)
19 vs.)
20 AT&T SERVICES, INC. (formerly SBC)
Services, Inc.) and DOES 1 through 10;)
21 Defendants.)
22)
23)
24)
25)
26)
27)
28)

Case No: CV 09-3983 BZ

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

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

1 **DECLARATION OF DOUGLAS N. SILVERSTEIN, ESQ.**

2 I, Douglas N. Silverstein, hereby declare as follows:

3 1. I am an attorney at law duly licensed to practice in the States of
4 California and Florida, and admitted to the United States District Court for the
5 Central and Eastern Districts of California, as well as the Ninth and D.C. Circuit
6 Courts of Appeals. I have personal knowledge of the facts set forth herein and, if
7 called as a witness, I could and would testify competently thereto.

8 **My Professional Background**

9 2. I have practiced labor and employment law *exclusively* for the past
10 16 years, and throughout California over the last 14 years. I began my career
11 with Morgan, Lewis & Bockius LLP, one of the largest firms in the world, with
12 one of the largest national labor and employment practices. I then joined
13 Ballard, Rosenberg, Golper & Savitt, a 25-attorney labor and employment firm
14 with one of the largest labor and employment practices in California. I
15 subsequently joined Littler Mendelson, the largest labor and employment law
16 firm in the world. In April 2004, along with my partner and associates, I
17 founded Kesluk & Silverstein, P.C. I am the Chair of the Labor and
18 Employment and Class Action Departments of Kesluk & Silverstein, P.C. I am a
19 member of the Los Angeles, California and American Bar Association Labor and
20 Employment Law Sections. I am also a member of the California and National
21 Employment Lawyers Associations, the National, California, and Los Angeles
22 Trial Lawyer Associations, and LEFTJAW, a plaintiffs' employment law
23 organization. I also have served as a Member of the Board of Governors of the
24 Consumer Attorneys Association of Los Angeles ("CAALA") since 2008, first as
25 an at large Member, and now an as elected Member. CAALA is the largest local
26 association of trial attorneys in the country. Of its more than 2,800 members,
27 only 35 are called upon to serve on the Board of Governors. In 2009, 2010 and
28

1 again in 2011, I have been chosen as a Super Lawyer, recognizing my
2 accomplishments as being in the top 5% of lawyers in Southern California.

3 3. I am a very active member of the continuing legal education
4 community. I have been asked to speak, write articles, and opine on various
5 labor and employment topics throughout California and nationally. A number of
6 our cases have also received national press coverage, and I have been quoted
7 regarding those cases, and interviewed for news and television shows. I also
8 serve on the Education Committee of CAALA, and in 2010 Co-Chaired
9 CAALA's Las Vegas Convention, attended by 1700 attorneys. I have again been
10 chosen to co-chair the 2011 Convention. In just the past 4 years alone, I have
11 had more than 25 writing and speaking engagements.

12 4. Over my career, I have routinely litigated labor and employment
13 matters throughout California. I estimate that I have handled hundreds of labor and
14 employment cases and taken a significant percentage to judgment through summary
15 judgment, arbitration, and trial. I have also handled a number of labor and
16 employment appeals in both state and federal courts, and before the National Labor
17 Relations Board ("NLRB"). I served as Southern California lead counsel for strike
18 violence and picketing issues for Ralphs Grocery Co. in the 2003 supermarket
19 strike. As you might expect, from a legal perspective, this strike required the
20 coordination of dozens of attorneys, numerous law firms, and substantial litigation
21 matters. A number of my cases are currently winding their way through the
22 California Courts of Appeal, California Supreme Court, the Ninth Circuit and the
23 D.C. Circuit, and may result in issues of first impression in California and federal
24 employment law. Another case of mine, *Zavala v. Scott Brothers Dairy, Inc.*, 143
25 Cal.App.4th 585 (2006), resulted in a published opinion that established the right of
26 unionized employees to bring statutory wage claims in court as a class action even
27 if their union had already grieved the identical claims.

1 5. In 2008-2009 alone, I tried 7 cases: 4 jury trials, 2 National Labor
2 Relations Board (NLRB) trials, and 1 arbitration. I won 3 of the 4 jury trials, and
3 the arbitration. In the NLRB trials, I defended an employer as to backpay liability
4 where that employer had previously been found to have committed an unfair labor
5 practice (the employer was not represented by my firm in the prior proceeding).
6 We successfully reduced the employer's backpay liability by more than 80%.
7 Among employment attorneys in California, we have one of the more active trial
8 practices, especially given the size of our firm.

9 6. I am currently class counsel in dozens of wage and hour class
10 actions, including several related and coordinated class actions in California state
11 court, and a Multi District Litigation (MDL) in federal court. My firm has been
12 designated lead class counsel in all but one of the cases (we filed that case after
13 the lead class counsel selections had already taken place). The most significant
14 aspect of my practice over the past decade has been class actions generally, and
15 wage and hour class actions in particular. I have prosecuted (and defended)
16 numerous wage and hour class actions over this time period. Our firm has made
17 a commitment to this type of work.

18 **My Knowledge of Hourly Rates**

19 7. I note that until founding Keskuk & Silverstein, P.C., my practice was
20 limited to representing only management in labor and employment matters. Now, I
21 represent primarily employees, but still represent employers from time to time. I
22 believe that this dual representation provides me an insight unique in labor and
23 employment law since very few attorneys in this area represent both employees and
24 employers. Given the firms I previously worked for, I routinely represented
25 numerous Fortune 100, 500, and 1000 companies. As a billing attorney for the last
26 decade, I am quite familiar with hourly rates and billing practices allowed outside
27 attorneys by major corporations in the labor and employment law arena. I am
28 familiar with the billing rates charged by other law firms which practice in the area

1 of labor and employment law in California since I have and continue to compete
2 with them for business. In addition, I have attended seminars put on by the
3 American Corporate Counsel Association (“ACCA”) regarding billing practices
4 and procedures. I am also familiar with the ACCA Billing Codes used by many
5 major corporations for legal billing. I am the partner in my firm responsible for
6 insuring our firm’s billing practices are consistent with applicable law and national
7 and local standards. My knowledge of billing rates and fees allowed in civil rights
8 cases also comes from reading the *Daily Journal* and *Central District Almanac*,
9 which report on such cases regularly. In 2006, I was contacted by a California State
10 Bar Arbitrator regarding an employment fee dispute. The arbitrator sought me out
11 because she had to determine the reasonable value of the services provided by the
12 attorney in her case. The arbitrator asked me for guidance on the range of hourly
13 rates for employment attorneys with a certain level of experience and
14 accomplishment in Los Angeles. I provided her with the requested information,
15 and later learned that she determined the reasonable rate in her case to be within the
16 ranges I suggested. I have also been sought out as a consultant for potential expert
17 testimony on the issue of hourly rates in employment cases. I have also frequently
18 been called upon by other attorneys seeking statutory fees in employment cases to
19 opine on the reasonableness of their rates sought.

20 8. My current billing rate – the rate I actually charge hourly clients when
21 retained or consulted on an hourly basis – is \$700.00 per hour. Through my
22 practice as discussed above, I have become familiar with the rates charged by law
23 firms in California for litigation of employment-related matters such as this case. I
24 set my firm’s rates to be competitive with the rates of law firms that routinely
25 defend the cases brought by my firm. This includes firms like Latham & Watkins,
26 Gibson Dunn & Crutcher, Paul Hastings Janofsky & Walker, and Morgan Lewis &
27 Bockius. Based on my knowledge of the rates charged in labor and employment
28 matters throughout California, it is my professional opinion that my rate is well

1 within the range charged by comparably qualified attorneys for similar litigation.
2 *See e.g., Bihun v. AT&T Information Systems, Inc.*, 13 Cal.App.4th 976, 997-98
3 (1993) (affirming in *1993* an award of attorney's fees at the rate of \$450.00 per
4 hour to lead counsel in a sexual harassment case). This is not just a theoretical
5 hourly rate – we actually charge and collect these rates from our hourly clients. It is
6 especially worth noting that many of the attorneys in my prior firms charged in
7 excess of these rates per hour for labor and employment matters. I am aware that
8 they charge even more than that now. If I still worked with my former firms, my
9 hourly rate would no doubt be significantly higher.

10 9. Perhaps more importantly, I have been court-approved at my current
11 rate of \$700 three times in 2010. *Barrera v. GameStop Corp.*, C.D. Cal., Case No.
12 CV 09-1399 ODW (Ex) (2010); *Pepsi Bottling Group Wage and Hour Cases*, Los
13 Angeles Superior Court (Complex), Judicial Council Coordination Proceeding No.
14 4573 (2010); *Contreras v. Pacific Dental Services, Inc.*, Los Angeles Superior
15 Court Case No. BC 398419 (2010).

16 **Reputation of V. James DeSimone, Michael D. Seplow and Tomas W. Falvey**

17 9. I have personally known V. James DeSimone for approximately 6
18 years. Mr. DeSimone is truly a leader in the bar, whether he is winning a trial, an
19 appeal, or offering his sage advice to another attorney. He is widely regarded as
20 being on the short list of the top employment and civil rights attorneys in
21 California. Mr. DeSimone and I tried separate cases at the same time, and spent
22 time talking about the cases in the courthouse. I have also had the opportunity to
23 interact with Mr. DeSimone at various bar functions. I have reviewed Mr.
24 DeSimone's concurrently filed declaration. His accomplishments are impressive.
25 All of these factors all lead me to believe that Mr. DeSimone could command a
26 high hourly rate.

27 10. I have personally known Michael D. Seplow for approximately 6
28 years. Mr. Seplow's outstanding reputation is very well-established in the

1 employment law community, and he is well-known for his skills as an advocate, a
2 trial lawyer and a consummate professional. I first became familiar with Mr.
3 Seplow when he referred a case to my firm. Over the years, we have seen each
4 other at various bar functions and in court. Just this year, Mr. Seplow was
5 predecessor counsel on a case that my firm ultimately resolved. I had the
6 opportunity to once again interact with Mr. Seplow on a variety of issues. I have
7 reviewed Mr. Seplow's concurrently filed declaration detailing his many
8 accomplishments. I am of the opinion that Mr. Seplow could command a premium
9 hourly rate.

10 11. I have personally known Thomas W. Falvey for approximately 7
11 years. I have had the opportunity to frequently interact with Mr. Falvey through
12 LEFTJAW, a plaintiff's employment organization of which we are both members.
13 Mr. Falvey is one of the leaders of LEFTJAW. In an increasingly uncivil legal
14 profession, Mr. Falvey sets the standard for his professionalism and gentlemanly
15 demeanor. He is widely respected for the depth and breadth of his knowledge, and
16 is regarded as a labor and employment "thoroughbred." Consistent with his
17 concurrently filed declaration, I am personally aware that for a number of years,
18 Mr. Falvey has focused his practice on wage and hour class actions. Given Mr.
19 Falvey's accomplishments and years of experience, I would expect that he could
20 charge a very high hourly rate.

21 12. Attorneys like Messrs. DeSimone, Seplow and Falvey are essential to
22 our system of justice because they act as private attorney generals, protecting the
23 people of our state from violations of statutory law setting the minimum standards
24 that govern employment relationships.

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1 **My Opinion of the Rates Sought in This Case**

2 13. I have been asked to express my opinion of the hourly rates being
3 sought in this case. I understand the current billing rate for Mr. DeSimone is \$650,
4 for Mr. Seplow is \$600, and for Mr. Falvey is \$700. Through my practice as
5 discussed above, I have become familiar with the rates charged by law firms in
6 California for litigation of employment-related matters such as this case. Based on
7 my knowledge of the rates charged in labor and employment matters throughout
8 California, especially major metropolitan areas such as San Francisco and Los
9 Angeles, and my knowledge of the experience level and abilities of Plaintiffs'
10 counsel, it is my professional opinion that the rates sought are well within the range
11 charged by comparably qualified attorneys for similar litigation.

12 **The Importance of a Multiplier and Attorneys' Fees as a Percentage of a**
13 **Class Action Settlement**

14 14. I also have been informed that plaintiff's counsel took this case on a
15 contingent fee basis against a major corporation represented by a prominent
16 defense firm. My law firm handles cases on a contingent basis. When we take
17 contingent cases, we must pay careful attention to the economics involved, or
18 one bad case can destroy years of work. Accordingly, when we do take
19 contingent cases, we anticipate that we will, if successful, receive a fee that well
20 exceeds our normal hourly rate; otherwise, the risk is often too great to bear.

21 15. Contingent cases present the very real risk of working hundreds if
22 not thousands of hours that may never be entirely compensated. Moreover,
23 while the case is being litigated, counsel must pay overhead (salaries, rent, etc.),
24 provide for their own expenses, and in most cases, pay the out-of-pocket
25 expenses incurred on the plaintiff's behalf. In my experience, an enhancement of
26 the hourly rate which reflects the result attained by counsel is necessary to make
27 the fee in such cases reasonable, and to make it feasible for other attorneys to
28 take such cases.

1 16. The prospect of a court-awarded fee does not greatly reduce the risk
2 posed by these cases. In many cases, the prospect is nothing more than a
3 potential that never materializes. First, you must win the case to get a court-
4 awarded fee; even those cases that seem strongest at the outset can be lost, and
5 sometimes are lost. Second, there always are pitfalls and unforeseen obstacles
6 that arise along the way, such as settlement offers that the client may accept
7 without ensuring that we receive a reasonable fee, or changes in the law that
8 substantially affect the merits of the case, or other uncertainties involving the
9 client. Finally, there is the great risk inherent in advancing tens if not hundreds
10 of thousands of dollars in out-of-pocket expenses. If that money were to be
11 invested in some sort of financial investment, one would expect a reasonable rate
12 of return on that investment. Here, however, the best we can hope to recover is
13 our money back, and then only if we are substantially successful; if we are not,
14 all or part of this “investment” can be lost.

15 17. I understand that this case ultimately resolved for \$17,000,000, and
16 that there were only 673 class members. This equates to approximately \$124 per
17 work week. I’ve also been informed that the response rate by the class members
18 is approximately 85%, with a substantial payout for each class member. This is
19 truly an exceptional result.


20 18. Wage and hour class action attorneys’ fees are typically based
21 on a percentage of the settlement. This is the preferred method of compensation in
22 the Ninth Circuit, and for good reason. Compensating class counsel in class
23 litigation on a percentage basis makes good sense because: (1) it is consistent with
24 the private marketplace where contingent fee attorneys are customarily
25 compensated on such a basis; (2) it aligns the interests of class counsel and absent
26 class members in achieving the maximum possible resolution of the case; and (3) it
27 augers for the most efficient and expeditious resolution of the litigation by
28 providing an incentive for early, yet reasonable, settlement. I routinely receive fee

1 awards between 33 ⅓ and 35% of the total settlement. Here is a sampling of such
2 cases: *Barrera v. GameStop Corp.*, C.D. Cal., Case No. CV 09-1399 ODW (Ex)
3 (2010) (33 ⅓ % attorneys' fees); *Rosanna Robinson Mc-Koy v. APX Express, Inc.*,
4 *et al.*, Los Angeles Superior Court (Complex) Case No. BC350846 (2007)
5 (approved for payment by U.S. Bankruptcy Court, C.D. Cal) (35% attorneys' fees)
6 *In re Pepsi Bottling Group Wage and Hour Cases*, Los Angeles Superior Court
7 (Complex), Judicial Council Coordination Proceeding No. 4573 (2010) (33 ⅓ %
8 attorneys' fees); *Contreras v. Pacific Dental Services, Inc.*, Los Angeles Superior
9 Court Case No. BC 398419 (2010) (33 ⅓ % attorneys fees); *Gonzalez v. Pete &*
10 *Sons*, Los Angeles Superior Court Case No. BC329852 (2006) (35% attorneys'
11 fees); *Solis v Hi-Tech Collision*, Los Angeles Superior Court Case No. BC336338
12 (2007) (35% attorneys' fees).

13 19. I understand Plaintiffs' counsel is seeking a fee of 30% of the
14 settlement. It is my professional opinion that this percentage is well within the
15 amounts typically allowed in wage and hour class actions, particularly given the
16 outstanding results obtained here.

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18 I declare under penalty of perjury under the laws of the United States that
19 the foregoing is true and correct.

20 Executed this 19th day of December, 2010, at Los Angeles, California.

21
22 
23 Douglas N. Silverstein