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11 Attorneys for Plaintiffs

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

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

Case No: CV 09-3983 BZ

**DECLARATION OF MATTHEW
 RIGHETTI 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 I, Matthew Righetti, declare that:

2 1. I make this declaration of my personal knowledge and could testify thereto if
3 called as a witness.

4 **EDUCATION AND EXPERIENCE**

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6 2. I graduated from the University of California at Berkeley in 1982 with a degree
7 in Economics. I then graduated from the University of San Francisco School of Law in 1985. I
8 am admitted to practice law before the following courts: A) United States Courts of Appeal in
9 the Ninth Circuit and the Federal Circuit; B) United States District Courts in the Northern,
10 Central, Eastern, and Southern Districts of California, and the Northern District of Illinois, and
11 C) all of California's state courts.

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13 3. I have been practicing law full time for the past twenty-five (25) years. My
14 practice has been devoted to complex class action litigation for the past nineteen years. Much
15 of this litigation has involved class action prosecution of wage and hour laws (state and
16 federal), state and federal privacy laws (FCRA and CCCRA) and consumer laws. My practice
17 involves litigation in both state and federal courts. A sampling of some of the more significant
18 class action cases (including wage and hour litigation) handled by Righetti Law Firm, P.C.
19 (now Righetti Glugoski, P.C.), includes: *Rutti v. Lojack Corp., Inc.* (2010) 596 F.3d 1046
20 [Ninth Circuit grants petition for rehearing reversing district court's summary judgment order
21 finding work compensable under both state and federal law]; *Rocher v. Sav-On Drug Stores*
22 (Hon. Victoria G. Chaney, Los Angeles County Superior Court) [in a seminal decision, the
23 California Supreme Court unanimously overturned the Court of Appeal's decision to reverse a
24 trial court's class certification order (see, *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34
25 Cal.4th 319)]; *Gentry v. Circuit City Stores, Inc.* (Hon Tricia Ann Bigelow, Los Angeles County
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1 Superior Court), California Supreme Court reverses court of appeal's decision affirming the
2 trial court's order to enforce an employment agreement barring class actions (see, *Gentry v.*
3 *Superior Court* (2007) 42 Cal.4th 443); *Crab Addison v. Superior Court* (2008) 169
4 Cal.App.4th 958 [court of appeal affirms trial court decision compelling defendant to divulge
5 names and contact information of all putative class members in wage and hour overtime
6 action]; *Cooper et al. v. Chief Auto Parts* (Hon. Ken Kawaichi, Alameda County Superior
7 Court), a multi-party (over 200 included plaintiffs) overtime case that proceeded through a
8 merits arbitration; *Winfrey v. Chief Auto Parts* (Hon. David Garcia, San Francisco Superior
9 Court), a certified wage and hour class action where the trial court's order to deny certification
10 was reversed by the First District Court of Appeal in an unpublished opinion. There are many
11 other cases where Righetti Glugoski, P.C. has acted as class counsel in certified class actions in
12 state and federal courts and on appeal. Righetti Glugoski also represents various amicus groups
13 on occasion in court of appeal proceedings. We have handled appeals throughout California
14 and in the federal courts of the Ninth Circuit, the Seventh Circuit, the Fourth Circuit and the
15 Federal Circuit.

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19 4. We acted as trial counsel in what we believe are the only three class action
20 overtime cases ever to have been tried under the quantitative executive exemption standard
21 articulated in *Ramirez v. Yosemite Water Company* (1999) 20 Cal.4th 785. I was trial counsel
22 in a class action tried in Los Angeles County Superior Court before the Hon. J. Stephen
23 Czuleger, resulting in a phase one finding that U-Haul had misclassified all California salaried
24 "General Managers" as exempt from overtime. The case settled before the phase two remedy
25 trial convened. I was also class counsel in a case tried in San Diego County Superior Court
26 before the Honorable Patricia Cowett, resulting in a judgment finding that *Party City* had
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1 misclassified salaried employees as exempt from and awarding class wide damages. In the
2 third case, I was class counsel in the *Sav-on* overtime litigation where we completed the first
3 phase of trial before the Honorable Victoria G. Chaney in Los Angeles County Superior Court
4 (complex). The case was then settled before the second phase of trial.
5

6 5. I regularly speak on panels that involve class action and employment issues. On
7 average, I speak four or five times per year to organizations such as the American Conference
8 Institute, California Employment Lawyers Association, Bridgeport CEB, Industrial Relations
9 Association, and a wide range of Bar associations in California on class action issues involving
10 matters such as trial methodology, class certification, discovery and privacy issues, arbitration
11 agreements and releases, mediation and settlement and recent developments in the field.
12

13 6. I am familiar with the non-contingent market rates charged by attorneys in the
14 major metropolitan areas of California (Los Angeles, Sacramento, Bay Area, Orange County,
15 San Diego). This familiarity has been obtained in several ways: (1) by handling attorneys' fee
16 litigation; (2) by discussing fees with other attorneys (both defense and plaintiffs); (3) by
17 reviewing declarations regarding prevailing market rates in cases seeking fees; and (4) by
18 reviewing attorneys' fee applications and court awards in both my cases and other cases, as well
19 as surveys and articles on attorney's fees in the legal newspapers and treatises.
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22 7. I am very familiar with legal work and reputation of Tom Falvey, James
23 DeSimone, Michael Seplow and JD Henderson both as to their work on behalf of California
24 employees and their work specifically in the *Waters* case. Over the years I frequently discussed
25 and strategized with these counsel as they worked on the *Waters* case. I consider these
26 attorneys to be top-notch litigators who enjoy an excellent reputation as plaintiffs'-side wage
27 and hour class action attorneys.
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1 8. I am quite familiar with *Waters v. AT&T, et al.*, US District Court, Northern
 2 District of California Case No. C09-3983 involving over 600 class members. I have kept
 3 abreast of the case as it was litigated via both discussions with Mr. Falvey and reading
 4 pleadings from that case. Mr. Falvey has also provided me with information about the work
 5 Mr. Falvey performed and expenses incurred, as well as the procedural history of the case.
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7 9. I understand that the current billing rates for plaintiffs' counsel in this case are
 8 as follows:

9	Thomas Falvey	\$700
10	James DeSimone	\$650
11	Michael Seplow	\$600
12	JD Henderson	\$450
13	Paralegals and legal assistants	\$150
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16 10. In my opinion, and based on my knowledge of attorney billing rates, I believe
 17 the above rates are reasonable. I make this assessment in light of many factors including the
 18 reputation, experience, and talents of these particular attorneys referenced above, my extensive
 19 knowledge of the reputation and rates charged by Paul Hastings (a high caliber management-
 20 side defense firm), the results achieved and the risks involved. The requested rates are
 21 consistent with the prevailing rates customarily charged by attorneys with comparable
 22 experience. At my firm, for example, partners' billing rates currently range from \$600 per hour
 23 to \$750 per hour, and associates' rates range from \$300 to \$450 per hour. Our billing rates for
 24 paralegals and legal assistants range from \$125 to \$150 per hour. My current hourly billing
 25 rate is \$750 per hour and this rate has been approved as fair and reasonable in several recent
 26 wage and hour class actions.
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1 11. By any measure, the result obtained in this case is extraordinary. The primary
2 focus in this case was Plaintiffs' overtime claims and Plaintiffs obtained a settlement
3 \$17,000,000 representing a significant portion of their overtime damages. With an average
4 award to class members of over \$18,000 (some in excess of \$30,000) and 87.5% of available
5 work weeks claimed, this recovery is exceptional. In my experience the percentage of class
6 members submitting claims is generally in the range of 25%-50%, or lower, which makes the
7 high claim rate in this case extraordinary. I know of many attorneys and many cases where
8 little to no effort was made to enhance notice (i.e., use skip tracing, phone banks and other
9 creative procedures to make sure class members are advised of their rights and deadlines).
10 These extra efforts are important in order to motivate class member participation. Not
11 surprisingly, it is those cases where little effort is made that we find most of the settlement
12 returned to the defendant via a low claim rate and a reversion – thereby resulting in the
13 anomalous and unsatisfactory situation where a high proportion of funds actually paid out by
14 the defendant is earmarked for attorney fees. That is not the situation here – and I strongly
15 believe that where class counsel is creative and works hard to get funds into the hands of the
16 class members via a high claim rate, as here, then it is important for the courts to reward those
17 extra efforts.

21
22 12. It cannot be overlooked that Plaintiffs' counsel faced a very significant level of
23 risk in this case, as the law in the area of class-based challenges to wage and hour violations is
24 always evolving and fraught with obstacles. There was a significant risk in obtaining class
25 certification and maintaining class status through trial despite certain challenges to certification.
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1 13. More importantly, as one of but a few attorneys who have actually tried a
2 misclassification overtime class action, I can truly appreciate the risks, novelty, difficulty and
3 skill required to try this case as a class action at both the liability and damages phases.
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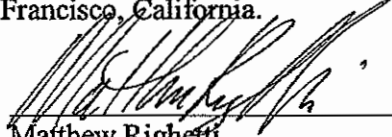
5 14. The *Waters* case has conferred a substantial benefit on California workers by
6 restricting the misuse of California's exemption rules. It is my belief and expectation that, as a
7 result of their success in the *Waters* case, other California citizens will enjoy the protections
8 due to them under California law.
9

10 15. There are few firms with the experience, resources and manpower to litigate a
11 substantial class case such as this one. The efforts of Plaintiffs' counsel are notable given the
12 amount of time, effort, and significant cost that was required to litigate this case from inception
13 to conclusion. It is difficult to prosecute this kind of case against an obviously well funded
14 defendant – and especially so when the defendant appears to have given its attorneys a “blank
15 check” to mount a defense.

16 16. Plaintiffs' counsel represented Plaintiffs on a wholly contingent risk basis.
17 Based upon my experience, lawyers who accept representations in contingent cases must pay
18 careful attention to the economics involved. In such cases, lawyers reasonably expect that if
19 they succeed then they should properly receive a fee award that is several times their normal
20 hourly rates; otherwise, the risk is often too great to bear. In my experience, this is how the
21 California legal market deals with the factor of contingent risk in cases involving statutory fee
22 shifting. This is particularly true in risky class action litigation against a recalcitrant defendant.
23 The superb result obtained in this case, the complexity and novelty of the issues, the high claim
24 rate and claim value, the superior representation of Plaintiffs' counsel, and the preclusion of
25 other work necessitated by the compressed litigation schedule and the extraordinary contingent
26 risk of this action amply justify both a common fund percentage of thirty percent and a
27 significant multiplier. I believe such a fee would be consistent with how the legal market
28 would treat similarly difficult, risky, and successful cases.

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I declare under penalty of perjury that the foregoing is true and correct. Executed this
21st day of December, 2010, at San Francisco, California.



Matthew Righetti