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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.

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6 DATED: July 23, 2010

SCHONBRUN DESIMONE SELOW
HARRIS & HOFFMAN LLP
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)
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13 Attorneys for Plaintiffs, DUANE WATERS,
DEBRA TURNER, and RUDY FAJARDO,
14 on behalf of themselves, all others similarly
situated and the general public

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

1 Plaintiffs Duane Waters, Debra Turner, and Rudy Fajardo, individually and on
2 behalf of all others similarly situated, and defendant AT&T Services, Inc. (“Defendant” or
3 “AT&T”), by and through their respective counsel of record, agree to resolve the above-captioned
4 case through this Joint Stipulation of Settlement and Release Between Plaintiffs and Defendant
5 (“Settlement”).

6 I.

7 **DEFINITIONS**

8 The terms below have the following meanings:

9
10 1. “Action” means the civil action entitled *Duane Waters, Debra Turner, and*
11 *Rudy Fajardo, on behalf of themselves, all others similarly situated and the general public vs.*
12 *AT&T Services, Inc. (formerly SBC Services, Inc.) and Does 1 through 10*, filed in the United
13 States District Court, Northern District of California, Case No. 3:09-CV-03983 BZ.

14 2. “AT&T” or “Defendant” shall mean Defendant AT&T Services, Inc.

15 3. “Class Representatives” or “Plaintiffs” shall mean Plaintiffs Duane Waters,
16 Debra Turner, and Rudy Fajardo.

17 4. “Court” refers to the United States District Court for the Northern District
18 of California.

19 5. “Class Counsel” shall mean V. James DeSimone, Michael D. Seplow, and
20 Michael Morrison of SCHONBRUN DESIMONE SEPLOW HARRIS & HOFFMAN LLP, and
21 Thomas W. Falvey and J.D. Henderson of the LAW OFFICES OF THOMAS W. FALVEY.

22 6. “Parties” shall mean the Plaintiffs/Class Representatives and Defendant.

23 7. “Class” or “Class Members” include the following persons:

24 All persons who work or worked for AT&T Services, Inc. in
25 the State of California as Senior Analysts (or Senior IT Analysts or
26 Senior QC Test Analysts) or Senior Database Administrators, while
27 classified by the Defendant as exempt from overtime pay
28 requirements, at any time from August 27, 2005 through the date of
preliminary approval of the Settlement.

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 SEFLOW 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, 24th 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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