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10 Attorneys for Defendant
AT&T SERVICES, INC.

11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA

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

17 Plaintiffs,

18 vs.

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

20 Defendants.

CASE NO. 3:09-CV-03983 BZ

**AT&T SERVICES, INC.'S ANSWER
TO PLAINTIFFS' FIRST AMENDED
COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF**

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1 Defendant AT&T Services, Inc., for itself alone and no other defendant, answers
2 the First Amended Complaint for Damages and Injunctive Relief of Plaintiffs Duane Waters,
3 Debra Turner, and Rudy Fajardo as follows:

4 1. Answering Paragraph 1, Defendant admits that Plaintiffs purport to bring this
5 action on behalf of a class they define as including certain California Information Technology
6 (IT) employees of Defendant. Defendant denies that this action is suitable for certification as a
7 class. Except as expressly admitted, Defendant denies the allegations in this paragraph.

8 2. Answering Paragraph 2, Defendant admits and alleges that at all times material to
9 this action, it has conducted business in good standing within the State of California. Defendant
10 lacks knowledge or information as to the truth of the allegation that Plaintiffs “are citizens of
11 California,” and on that basis denies this allegation. Defendant admits that it has employed more
12 than 100 individuals as Senior Analyst, Senior IT Analyst, and/or Senior Database Administrator
13 in the State of California during the relevant time period. Defendant admits that the amount in
14 controversy exceeds \$5,000,000, exclusive of interests and costs, but denies that Plaintiffs or the
15 purported class have been damaged in any amount. Except as so admitted or denied, the
16 remaining allegations in this paragraph are legal conclusions that require no response.

17 3. Answering Paragraph 3, Defendant admits that it conducts business in this judicial
18 district. Defendant denies that any unlawful actions as alleged in Plaintiffs’ Complaint took place
19 in this or any judicial district. Except as so admitted or denied, the remaining allegations in this
20 paragraph are legal conclusions that require no response.

21 4. Answering Paragraph 4, Defendant admits that it employed Plaintiffs in computer-
22 related positions during the relevant time period. Defendant lacks sufficient information or belief
23 to admit or deny the allegation that Plaintiffs “performed all obligations as required during
24 employment,” and on that basis denies this allegation. Except as expressly admitted, Defendant
25 denies the remaining allegations in this paragraph.

26 5. Answering Paragraph 5, Defendant lacks knowledge or information as to the truth
27 of the allegation that Plaintiff Duane Waters is “a citizen of the State of California,” and on that
28 basis denies this allegation. Defendant admits that it employed Plaintiff as a Senior Analyst or

1 Senior IT Analyst in San Ramon, California at certain relevant times up until February 2008.

2 Except as expressly admitted, Defendant denies the allegations in this paragraph.

3 6. Answering Paragraph 6, Defendant lacks knowledge or information as to the truth
4 of the allegation that Plaintiff Debra Turner is “a citizen of the State of California,” and on that
5 basis denies this allegation. Defendant admits that it employed Plaintiff as a Senior Analyst in
6 San Diego, California between 2004 and May 2006. Except as expressly admitted, Defendant
7 denies the allegations in this paragraph.

8 7. Answering Paragraph 7, Defendant lacks knowledge or information as to the truth
9 of the allegation that Plaintiff Rudy Fajardo is “a citizen of the State of California,” and on that
10 basis, denies this allegation. Defendant admits that it employed Plaintiff as a Senior Database
11 Administrator in San Diego, California at certain relevant times up until November 2007. Except
12 as expressly admitted, Defendant denies the allegations in this paragraph.

13 8. Answering Paragraph 8, Defendant denies the allegations in this paragraph.

14 9. Answering Paragraph 9, Defendant admits that it is a corporation doing business in
15 California, is incorporated in the State of Delaware, and has its principal place of business in the
16 State of Texas. Except as expressly admitted, Defendant denies the allegations in this paragraph.

17 10. Answering Paragraph 10, the allegations in this paragraph are legal conclusions
18 that require no response. To the extent any response may be required, Defendant denies the
19 allegations in this paragraph.

20 11. Answering Paragraph 11, Defendant admits that Plaintiffs purport to bring this
21 action on behalf of a class of allegedly similarly-situated persons pursuant to Federal Rule of
22 Civil Procedure 23. Defendant denies that any class exists, that this action is suitable for
23 certification as a class, or that any member of the purported class is entitled to overtime pay under
24 federal or California law. Defendant admits that Plaintiffs seek to represent a class as defined in
25 Paragraph 11. Except as expressly admitted, Defendant denies the allegations in this paragraph.

26 12. Answering Paragraph 12, Defendant admits and alleges that during the relevant
27 time it has employed more than 100 individuals as Senior Analysts, Senior IT Analysts, and/or
28 Senior Database Administrators. Except as expressly admitted, the remaining allegations in this

1 paragraph are legal conclusions that require no response. To the extent any response may be
2 required, Defendant denies the remaining allegations in this paragraph.

3 13. Answering Paragraph 13, Defendant denies the allegations in this paragraph,
4 including all subparts.

5 14. Answering Paragraph 14, Defendant denies the allegations in this paragraph.

6 15. Answering Paragraph 15, Defendant denies the allegations in this paragraph.

7 16. Answering Paragraph 16, Defendant denies the allegations in this paragraph.

8 17. Answering Paragraph 17, Defendant admits and alleges that during the relevant
9 time period Plaintiffs were classified as exempt employees whose salaries were intended to
10 compensate them for all hours worked. Except as expressly admitted, Defendant denies the
11 allegations in this paragraph.

12 18. Answering Paragraph 18, Defendant admits and alleges that Plaintiffs, as exempt
13 employees, were not entitled to compensation for any alleged failure by Defendant to provide
14 meal periods or for any alleged failure to authorize and permit rest breaks. Except as expressly
15 admitted, Defendant denies the allegations in this paragraph.

16 19. Answering Paragraph 19, Defendant admits and alleges that at relevant times,
17 members of the purported class were classified as exempt employees whose salaries were
18 intended to compensate them for all hours worked. Except as expressly admitted, Defendant
19 denies the allegations in this paragraph.

20 20. Answering Paragraph 20, Defendant admits and alleges that during the relevant
21 time period, members of the purported class, to the extent they were classified as exempt
22 employees, were not entitled to compensation for any alleged failure by Defendant to provide
23 meal periods. Except as expressly admitted, Defendant denies the allegations in this paragraph.

24 21. Answering Paragraph 21, Defendant admits and alleges that during the relevant
25 time period, members of the purported class, to the extent they were classified as exempt
26 employees, were not entitled to compensation for any alleged failure by Defendant to authorize
27 and permit rest breaks. Except as expressly admitted, Defendant denies the allegations in this
28 paragraph.

1 22. Answering Paragraph 22, Defendant realleges and incorporates by reference its
2 responses to Paragraphs 1 through 21.

3 23. Answering Paragraph 23, Defendant denies the allegations in this paragraph.

4 24. Answering Paragraph 24, Defendant denies the allegations in this paragraph.

5 25. Answering Paragraph 25, Defendant denies the allegations in this paragraph.

6 26. Answering Paragraph 26, Defendant denies the allegations in this paragraph.

7 27. Answering Paragraph 27, Defendant realleges and incorporates by reference its
8 responses to Paragraphs 1 through 26.

9 28. Answering Paragraph 28, Defendant admits and alleges that Plaintiffs and
10 members of the purported class, to the extent they were classified as exempt employees, were not
11 entitled to compensation for any alleged failure to provide meal periods. Except as expressly
12 admitted, Defendant denies the allegations in this paragraph.

13 29. Answering Paragraph 29, Defendant admits and alleges that Plaintiffs and
14 members of the purported class, to the extent they were classified as exempt employees, were not
15 entitled to compensation for any alleged failure to authorize and permit rest breaks. Except as
16 expressly admitted, Defendant denies the allegations in this paragraph.

17 30. Answering Paragraph 30, Defendant denies the allegations in this paragraph.

18 31. Answering Paragraph 31, Defendant denies the allegations in this paragraph.

19 32. Answering Paragraph 32, Defendant realleges and incorporates by reference its
20 responses to Paragraphs 1 through 31.

21 33. Answering Paragraph 33, Defendant denies the allegations in this paragraph.

22 34. Answering Paragraph 34, Defendant denies the allegations in this paragraph.

23 35. Answering Paragraph 35, Defendant realleges and incorporates by reference its
24 responses to Paragraphs 1 through 34.

25 36. Answering Paragraph 36, the allegations in this paragraph are legal conclusions
26 that require no response.

27 37. Answering Paragraph 37, Defendant admits and alleges that some members of the
28 purported class resigned or were terminated from their employment with Defendant during the

1 relevant time period. Except as expressly admitted, Defendant denies the allegations in this
2 paragraph.

3 38. Answering Paragraph 38, Defendant admits and alleges that during the relevant
4 time period, members of the purported class, to the extent they were classified as exempt
5 employees, were paid on a salaried basis for all hours worked, including overtime, and were not
6 entitled to compensation for any alleged failure by Defendant to provide meal periods or any
7 alleged failure to authorize and permit rest breaks. Except as expressly admitted, Defendant
8 denies the allegations in this paragraph.

9 39. Answering Paragraph 39, Defendant realleges and incorporates by reference its
10 responses to Paragraphs 1 through 38.

11 40. Answering Paragraph 40, Defendant denies the allegations in this paragraph.

12 41. Answering Paragraph 41, the allegations in this paragraph are legal conclusions
13 that require no response. To the extent any response may be required, Defendant denies the
14 allegations in this paragraph.

15 42. Answering Paragraph 42, Defendant admits and alleges that during the relevant
16 time period, members of the purported class, to the extent they were classified as exempt
17 employees, were paid on a salaried basis for all hours worked, including overtime, and were not
18 entitled to compensation for any alleged failure by Defendant to provide meal periods or any
19 alleged failure to authorize and permit rest breaks. Except as expressly admitted, Defendant
20 denies the allegations in this paragraph.

21 43. Answering Paragraph 43, Defendant denies the allegations in this paragraph.

22 44. Answering Paragraph 44, Defendant denies the allegations in this paragraph.

23 45. Answering Paragraph 45, Defendant realleges and incorporates by reference its
24 responses to Paragraphs 1 through 44.

25 46. Answering Paragraph 46, Defendant denies the allegations in this paragraph.

26 47. Answering Paragraph 47, Defendant denies the allegations in this paragraph.

27 48. Answering Paragraph 48, Defendant denies the allegations in this paragraph.

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1 49. Responding to Plaintiffs' Prayer for Relief, Defendant denies that Plaintiffs or the
2 members of the purported class have been damaged in any amount or are entitled to any relief.

3 **AFFIRMATIVE DEFENSES**

4 **FIRST SEPARATE AND AFFIRMATIVE DEFENSE**

5 50. The Complaint, and each purported cause of action contained therein, fails to state
6 a claim upon which relief can be granted.

7 **SECOND SEPARATE AND AFFIRMATIVE DEFENSE**

8 51. The Complaint, and each purported cause of action contained therein, is barred
9 because Plaintiffs and the putative class members are, and at all material times have been, exempt
10 from California's overtime pay and related requirements, and exempt from overtime under the
11 Fair Labor Standards Act, under the administrative, computer professional, learned professional,
12 executive, and/or other applicable exemptions.

13 **THIRD SEPARATE AND AFFIRMATIVE DEFENSE**

14 52. The Complaint, and each purported cause of action contained therein, is barred
15 because Plaintiffs and/or the putative class members did not perform the job duties they were
16 reasonably and realistically expected to perform. *See Ramirez v. Yosemite Water Co., Inc.*, 20
17 Cal. 4th 785 (1999).

18 **FOURTH SEPARATE AND AFFIRMATIVE DEFENSE**

19 53. The Complaint, and each claim for relief contained therein, is barred to the extent
20 that Plaintiffs and members of the purported class entered into an accord of the claims asserted in
21 this lawsuit, which accord has been satisfied.

22 **FIFTH SEPARATE AND AFFIRMATIVE DEFENSE**

23 54. Plaintiffs are estopped from obtaining the relief sought in the Complaint.

24 **SIXTH SEPARATE AND AFFIRMATIVE DEFENSE**

25 55. The Complaint, and each purported cause of action contained therein, is barred by
26 the doctrine of laches.

1 SEVENTH SEPARATE AND AFFIRMATIVE DEFENSE

2 56. The Complaint is barred, in whole or in part, by the doctrines of *res judicata* or
3 collateral estoppel to the extent that Plaintiffs and/or putative class members have already
4 litigated, settled and/or released the claims that are the subject of the Complaint.

5 EIGHTH SEPARATE AND AFFIRMATIVE DEFENSE

6 57. The Complaint, and each purported cause of action contained therein, is barred in
7 whole or in part by the applicable statutes of limitation, including but not limited to California
8 Code of Civil Procedure sections 335.1, 338, 339 and 340; California Labor Code section 203;
9 California Business and Professions Code section 17208; and 29 U.S.C. section 255.

10 NINTH SEPARATE AND AFFIRMATIVE DEFENSE

11 58. Plaintiffs, by reason of their acts, conduct, and omissions, have waived their rights,
12 if any, to obtain the relief sought in the Complaint.

13 TENTH SEPARATE AND AFFIRMATIVE DEFENSE

14 59. Plaintiffs' claims are barred, at least in part, because some of the disputed time for
15 which Plaintiffs seek recovery of wages purportedly owed is *de minimis* as a matter of law.

16 ELEVENTH SEPARATE AND AFFIRMATIVE DEFENSE

17 60. Plaintiffs' purported cause of action for failure to provide meal and rest periods is
18 barred, because Defendant provided meal periods as required by California law, and Plaintiffs and
19 the putative class members freely waived any and all meal periods they did not take.

20 TWELFTH SEPARATE AND AFFIRMATIVE DEFENSE

21 61. Plaintiffs' purported cause of action for failure to provide meal and rest periods is
22 barred, because Defendant authorized and permitted rest periods in accordance with California
23 law, and Plaintiffs and the putative class members freely waived any and all rest periods that they
24 did not take.

25 THIRTEENTH SEPARATE AND AFFIRMATIVE DEFENSE

26 62. Plaintiffs' purported cause of action for failure to furnish proper wage statements
27 is barred, because Defendant did not knowingly and intentionally fail to furnish accurate itemized
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1 wage statements, nor did Plaintiffs or the putative class members suffer any injury as a result of
2 Defendant's alleged failure to furnish accurate itemized wage statements.

3 FOURTEENTH SEPARATE AND AFFIRMATIVE DEFENSE

4 63. Plaintiffs' purported claim for waiting time penalties is barred, because Defendant
5 did not willfully fail to pay all final wages due on termination, and at all relevant times there has
6 existed a good-faith factual and legal dispute as to the matters which are the subject of Plaintiffs'
7 Complaint.

8 FIFTEENTH SEPARATE AND AFFIRMATIVE DEFENSE

9 64. Some or all of Plaintiffs' purported claims are subject to offset, set-off and/or
10 recoupment by virtue of payments that Defendant already has made to them and/or to members of
11 the putative class.

12 SIXTEENTH SEPARATE AND AFFIRMATIVE DEFENSE

13 65. Plaintiffs' purported cause of action for conversion is barred, because Plaintiffs
14 cannot state a claim for unpaid wages in tort, nor can they state a claim for liquidated sums of
15 money under the tort of conversion.

16 SEVENTEENTH SEPARATE AND AFFIRMATIVE DEFENSE

17 66. Plaintiffs' purported cause of action for unfair competition is barred, because
18 Plaintiffs cannot show an injury to competition, as distinguished from injury to Plaintiffs, if any.

19 EIGHTEENTH SEPARATE AND AFFIRMATIVE DEFENSE

20 67. Plaintiffs' purported cause of action for unfair competition is barred, because
21 California Business and Professions Code section 17200 *et seq.*, as stated and sought to be
22 applied by Plaintiffs, violates Defendant's rights under the federal Constitution and the California
23 Constitution in that, among other things, it is void for vagueness, violative of equal protection,
24 violative of due process, violative of freedom of contract, and poses an undue burden on interstate
25 commerce.

26 NINETEENTH SEPARATE AND AFFIRMATIVE DEFENSE

27 68. Plaintiffs' purported cause of action for unfair competition is barred, because
28 Plaintiffs are not seeking recovery of a quantifiable sum.

1 TWENTIETH SEPARATE AND AFFIRMATIVE DEFENSE

2 69. Plaintiffs' claims for penalties under the California Labor Code are barred,
3 because there is a good-faith dispute as to Defendant's obligation to pay any wages that may be
4 found to be due, and any award of penalties in the circumstances of this case would be unjust,
5 arbitrary, oppressive, and/or confiscatory.

6 TWENTY-FIRST SEPARATE AND AFFIRMATIVE DEFENSE

7 70. Plaintiffs' claims for penalties under the California Labor Code are barred,
8 because Plaintiffs have not properly exhausted their administrative remedies.

9 TWENTY-SECOND SEPARATE AND AFFIRMATIVE DEFENSE

10 71. Plaintiffs lack standing to seek prospective injunctive relief.

11 TWENTY-THIRD SEPARATE AND AFFIRMATIVE DEFENSE

12 72. Plaintiffs' claims for injunctive or equitable relief are barred, because they have an
13 adequate remedy at law.

14 TWENTY-FOURTH SEPARATE AND AFFIRMATIVE DEFENSE

15 73. The Complaint is barred, in whole or in part, because any recovery from
16 Defendant would result in Plaintiffs' unjust enrichment.

17 TWENTY-FIFTH SEPARATE AND AFFIRMATIVE DEFENSE

18 74. Plaintiffs have failed to state facts sufficient to support a claim for punitive or
19 exemplary damages.

20 TWENTY-SIXTH SEPARATE AND AFFIRMATIVE DEFENSE

21 75. Plaintiffs are barred from recovering punitive or exemplary damages, because the
22 California Labor Code provides the exclusive remedies for violations of California's wage-and-
23 hour laws.

24 TWENTY-SEVENTH SEPARATE AND AFFIRMATIVE DEFENSE

25 76. Plaintiffs are barred from recovering punitive or exemplary damages, because any
26 such award under California law generally or as applied in this case would violate Defendant's
27 rights under the United States and California Constitutions, including, but not limited to, the due
28 process clause, the excessive fines clause, and the cruel and unusual punishment clause.

1 TWENTY-EIGHTH SEPARATE AND AFFIRMATIVE DEFENSE

2 77. Plaintiffs and the putative class members have failed to mitigate or reasonably
3 attempt to mitigate their damages, if any, as required by law.

4 TWENTY-NINTH SEPARATE AND AFFIRMATIVE DEFENSE

5 78. Plaintiffs cannot satisfy the prerequisites for class certification and, therefore, lack
6 standing to represent the interests of the purported class.

7 THIRTIETH SEPARATE AND AFFIRMATIVE DEFENSE

8 79. Plaintiffs' interests are in conflict with the interests of some or all members of the
9 proposed class, and the interests of certain members of the proposed class are in conflict with the
10 interests of other members of the proposed class.

11 THIRTY-FIRST SEPARATE AND AFFIRMATIVE DEFENSE

12 80. Because liability or damages, if any, to each member of the proposed class may
13 not be determined by a single jury or on a class-wide basis, allowing this action to proceed as a
14 class or collective action would, in the circumstances of this particular case, violate Defendant's
15 rights under the Seventh and Fourteenth Amendments to the United States Constitution.

16 THIRTY-SECOND SEPARATE AND AFFIRMATIVE DEFENSE

17 81. Plaintiffs and the putative class are not entitled to recover the monetary penalties
18 prayed for in the Complaint, because combining the class action procedure with California's laws
19 regarding the alleged conduct in this action would result in excessive penalties that are wholly
20 unreasonable and unrelated to any actual harm suffered by Plaintiffs and the putative class, in
21 violation of Defendant's constitutional rights under provisions of the United States and California
22 Constitutions, including, but not limited to, the due process clauses of the Fifth and Fourteenth
23 Amendments to the United States Constitution and Article I Section 7 of the California
24 Constitution, and the excessive fines and cruel and unusual punishment clauses of the Eighth
25 Amendment to the United States Constitution and Article I Section 17 of the California
26 Constitution.

1 WHEREFORE, Defendant prays for judgment as follows:

2 1. That class certification be denied;

3 2. That Plaintiffs take nothing by reason of their Complaint, that the Complaint be
4 dismissed in its entirety with prejudice, and that judgment be entered for Defendant;

5 3. That Defendant be awarded its reasonable costs and attorneys' fees; and

6 4. That Defendant be awarded such other and further relief as the Court deems just
7 and proper.

8 DATED: October 28, 2009

J. AL LATHAM, JR.
THOMAS E. GEIDT
RISHI N. SHARMA
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By: 

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AT&T SERVICES, INC.

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