

COPY

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

LAW OFFICES OF THOMAS W. FALVEY
THOMAS W. FALVEY, SBN 65744
J.D. HENDERSON, SBN 235767
301 North Lake Avenue, Suite 800
Pasadena, California 91101
Telephone: (626) 795-0205

**ENDORSED
FILED
ALAMEDA COUNTY**

MAY 17 2010

**CLERK OF THE SUPERIOR COURT
By R.C. Hughes,**

RIGHETTI LAW FIRM, P.C.
MATTHEW RIGHETTI, SBN 121012
JOHN GLUGOSKI, SBN 191551
456 Montgomery Street, Suite 1400
San Francisco, CA 94104
Telephone: (415) 983-0900
Facsimile: (415) 397-9005

Attorneys for Plaintiff

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF ALAMEDA**

**DENISE LINDSLY, individually and on
behalf of all others similarly situated,**

Case No.: **RG09488115**

Plaintiff,

**FIRST AMENDED
CLASS ACTION COMPLAINT FOR:**

vs.

**AT&T SERVICES, INC.(formerly SBC
Services, Inc.) and DOES 1-25,
inclusive,**

- (1) Violation of California Labor Code;
- (2) Failure to Provide Meal Periods and Rest Breaks;
- (3) Violation of Business & Professions Code §§17200 and 17203

Defendants,

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

THIS IS A CLASS ACTION LAWSUIT

INTRODUCTION

1. This case arises out of DEFENDANTS' failure to pay overtime compensation and failure to provide rest and meal periods to certain California Information-Technology (IT) employees of DEFENDANTS. These IT employees primarily performed non-exempt functions for the DEFENDANTS, were misclassified as "exempt" from California's minimum working condition laws and as a consequence are owed overtime compensation and other benefits earned during the Class Period, which is defined as four years prior to the date of the filing of this complaint, through the date of trial. Plaintiff DENISE LINDSLY ("PLAINTIFF"), as an individual and on behalf of herself and all others similarly situated, complains and alleges on information and belief the following against AT&T SERVICES, INC., and DOES 1 through 25 (collectively "DEFENDANTS"): This is a class action brought on behalf of the following class:

All IT employees who held the titles of Technical Architect and/or Developer, during the class period and did not have a degree above a baccalaureate degree in a field of science related to the work performed, and who worked for DEFENDANTS in California, at any time within the four years preceding the filing of this lawsuit through the present (hereafter "class").

The above class of employees did not receive overtime compensation and was not provided, nor authorized and permitted to take, statutorily mandated meal breaks and/or rest breaks respectively and is similarly situated under California Code of Civil Procedure §382. Plaintiff seeks to recover unpaid overtime compensation, missed meal and rest break wages equivalent to one hour's worth of pay for each missed break, waiting time wages, interest, attorney's fees and costs for herself and all other present and former employees similarly situated. To the extent that the improper conduct alleged herein violates California Business and Professions Code §§17200, 17203 this action is also brought by the Plaintiff on behalf of the

1 public.

2
3 I.

4 **JURISDICTION AND VENUE**

5 2. This class action is brought pursuant to §382 of the California Code of Civil
6 Procedure. Plaintiff is informed and believes and based on such information and belief alleges
7 that venue is proper in the Alameda County Superior Court because Plaintiff performed worked
8 for Defendants in said County and because the Defendants own and operate numerous facilities --
9 and employ numerous putative class members -- in Alameda County. The Defendants' liability
10 to the Plaintiff arose in part within Alameda County and some of the wrongful acts complained
11 of occurred in that county.
12

13
14 II.

15 **NO FEDERAL JURISDICTION EXISTS**

16
17 3. This action is brought solely pursuant to California law. There is no federal
18 question at issue, as exempt status questions and remedies relating thereto are based solely on
19 California law and statutes, including the Labor Code, applicable Wage Order and the Business
20 & Professions Code.
21

22 III.

23 **PARTIES**

24 4. DEFENDANTS are doing business in the State of California. Throughout the class
25 period, DEFENDANTS employed hundreds of employees in California within the class
26 definition set forth herein.

27 5. At all times relevant to this Complaint, the wage and hour and all related employee
28

1 compensation policies of Defendants' locations in California are and were dictated by, controlled
2 by, and ratified by Defendants.
3

4 6. The true names and capacities of DEFENDANTS named herein as DOES 1 through
5 20 inclusive, whether individual, corporate, associate, or otherwise, are unknown to plaintiff who
6 therefore sues such Defendants under fictitious names pursuant to California Code of Civil
7 Procedure §474. Plaintiff is informed and believes, and thereon alleges, that these Defendants,
8 DOES 1 through 25, are in some manner or capacity, and to some degree, legally responsible and
9 liable for the wrongs of which Plaintiff complains. Plaintiff will amend their Complaint to allege
10 the true names and capacities of these DOE Defendants once they are ascertained. On
11 information and belief, Plaintiff makes all allegations contained in this complaint against all
12 Defendants, including DOES 1 through 25, inclusive.
13

14 7. At all times herein mentioned, each DEFENDANTS was an agent, servant,
15 employee and/or joint venturer of each of the remaining DEFENDANTS, and was at all times
16 acting within the course and scope of such agency, service, employment, and/or joint venture,
17 and each DEFENDANTS has ratified, approved, and authorized the acts of each of the remaining
18 DEFENDANTS with full knowledge of said acts.
19

20 8. PLAINTIFF DENISE LINDSLY at all relevant times was a non-exempt employee of
21 DEFENDANTS. PLAINTIFF's job duties consisted primarily of providing computer support,
22 trouble-shooting, and other technical services to DEFENDANTS. PLAINTIFF performed all
23 obligations as required during her employment. PLAINTIFF DENISE LINDSLY was employed
24 by DEFENDANT AT&T Services and DOES 1-25, inclusive, in California as an IT employee with
25 the job title of Technical Architect within the last four years.
26

27 9. The named Plaintiff and members of the alleged class are/were routinely required to
28

1 work in excess of eight (8) hours a day and/or forty (40) hours per week without receiving
2 overtime compensation.

3
4 10. Plaintiff brings this action on her own behalf and on behalf of all other such current
5 and former employees similarly situated, as well as on behalf of the California public.

6
7 IV.

8 **FACTUAL ALLEGATIONS**

9 11. Pursuant to DEFENDANTS uniform employment policies, class members are and
10 were classified as "exempt" and paid a set wage (either salary or hourly) for all hours worked.
11 During the class period, such employees typically worked well over eight hours per day and over
12 forty hours per week.

13 12. Throughout the class period, DEFENDANTS have refused to pay overtime wages
14 to the class. Throughout the class period, class members were not provided meal periods and
15 were not authorized and permitted to take rest breaks pursuant to the requirements of California
16 law.

17
18 13. The duties of the class members are set forth by uniform written company-wide
19 policies and procedures. California law states that an employee must be paid overtime, equal to
20 1.5 times the employee's regular rate of pay, for all hours worked in excess of 40 per week or 8
21 per day. Members of the alleged class are not exempt because, *inter alia*, they are production
22 workers, they do not spend a majority of their time on exempt tasks, they do not supervise two or
23 more subordinates, they do not customarily and regularly exercise discretion and independent
24 judgment in matters of consequence to Defendants business and they earn less than the minimum
25 amount per hour worked set by Labor Code 515.5(a)(4). DEFENDANTS cannot meet their
26 burden of showing the applicability of any exemption, including, but not limited to, any
27
28

1 exemption for administrative, professional, executive, commissioned sales person, or outside
2 sales person employees.

3
4 14. Labor Code §1174(d) and the IWC Order applicable to DEFENDANTS' industry
5 (Section 7) provide that every employer shall keep accurate information with respect to *each*
6 *employee* including time records showing both when the employee begins and ends each work
7 period and meal periods. When an employer fails to keep such time records, employees may
8 establish the hours worked solely by their testimony and the burden of overcoming such
9 testimony shifts to the employer. Hernandez v. Mendoza (1988) 199 Cal.App.3d 721.

10
11 15. While Plaintiff is unable to state at this time the exact amount owing to the class,
12 Plaintiff proposes to obtain such information by appropriate and focused discovery proceedings
13 to be taken promptly in this action, and request that damages or restitution be awarded according
14 to proof thus obtained and presented to the Court.

15
16 V.

17 **CLASS ACTION ALLEGATIONS**

18 16. Plaintiff brings this action individually and as a class action on behalf of the class
19 set forth in paragraph 1 herein.

20 17. Plaintiff's claims are typical of the claims of the proposed class because Plaintiff
21 and all the class members suffered similar harm as a consequence of DEFENDANTS' conduct,
22 as alleged, and the wage hour payroll policies and practices with respect to exempt status and
23 overtime entitlement for overtime hours worked are and were uniform between class members
24 throughout California.

25
26 18. Plaintiff is a representative party who will fully and adequately protect the interests
27 of the class members. He has retained counsel competent in both class action and employment
28

1 litigation. Plaintiff has no interests that are contrary to or in conflict with those of the class he
2 seeks to represent.

3
4 19. The members of the class are so numerous that joinder of all members would be
5 unfeasible and not practicable. The membership of the entire class is unknown to PLAINTIFF at
6 this time; however, it is estimated that the entire class is greater than 100 individuals. The
7 identity of individuals qualifying for class membership is readily ascertainable via inspection of
8 the personnel records and other documents maintained by DEFENDANTS (as are the days
9 worked and the regular rate of pay for each class member).

10
11 20. A class action is superior to other available means for the fair and efficient
12 adjudication of this lawsuit. Individual employees such as Plaintiff have a difficult time
13 prosecuting an individual action against a large corporate employer such as DEFENDANTS.
14 Even if any class member could afford individual litigation against a large business like
15 DEFENDANTS, it would be unduly burdensome to the court system. Individual litigation of
16 hundreds of similar claims in scores of counties magnifies the delay and expense to all parties.
17 By contrast, a class action presents far fewer management difficulties and affords the benefits of
18 unitary adjudication, economies of scale, and comprehensive supervision by a single court.
19 Concentrating this litigation in one forum will promote judicial economy and parity among the
20 claims of individual class members and judicial consistency in rulings. Notice of the pendency
21 and any resolution of this action can be efficiently provided to class members by mail, print,
22 broadcast, internet, and/or multimedia publication. Requiring each class member to both
23 establish individual liability and pursue an individual remedy would also discourage the assertion
24 of lawful claims by employees who would be disinclined to pursue an action against their present
25 and/or former employer for fear of retaliation and permanent damage to their careers at present
26
27
28

1 and/or subsequent employment. Proof of a common business practice or factual pattern, of
2 which the named plaintiff experienced, is representative of the PLAINTIFF CLASS and will
3 establish the right of each of the members of the PLAINTIFF CLASS to recovery on the claims
4 alleged herein.
5

6 21. The prosecution of separate actions by individual class members, even if possible,
7 would create: (a) a substantial risk of inconvenient or varying verdicts or adjudications with respect
8 to the individual class members against the DEFENDANTS herein; and/or (b) legal determinations
9 with respect to individual class members which would, as a practical matter, be dispositive of the
10 other class members not parties to the adjudications or which would substantially impair or impede
11 the ability of class members to protect their interests. Further, the claims of the individual members
12 of the class are not sufficiently large to warrant vigorous individual prosecution considering all of the
13 concomitant costs and expenses attending thereto. Plaintiff is also unaware of any difficulties that
14 are likely to be encountered in the management of this action that would preclude its maintenance as
15 a class action.
16
17

18 22. This type of case is uniquely well-suited for class treatment since the employer's
19 practices were uniform and the burden is on the employer to prove any alleged exemption.
20

21 23. Many issues of law or fact are common and they predominate over any individual
22 questions. These common issues include:

- 23 a. Whether those in the alleged class were uniformly classified as exempt,
24 in violation of California Labor Code and applicable IWC wage orders;
25 b. Whether DEFENDANTS failed to pay Plaintiff and class members all
26 overtime compensation due to them by virtue of their uniform designation
27 of employees as exempt in violation of California Labor Code and
28 applicable IWC wage order;
c. Whether Plaintiff and class members were expected to and/or mandated to
regularly work overtime;
d. Whether the class was expected to, or realistically required to perform
production work and whether such employees customarily and regularly

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- exercised discretion and independent judgment in matters of consequence to Defendants business;
- e. Whether Plaintiff and class members spent a majority of their time on exempt tasks and whether they supervised two or more other employees;
- f. Whether class members earn less than the minimum amount per hour worked set by Labor Code 515.5(a)(4);
- g. What are the correct educational requirements for the learned professional exemption and whether class members meet those requirements;
- h. Whether DEFENDANTS failed to either provide meal periods or pay Plaintiff and class members meal break wages per California Labor Code §226.7;
- i. The correct statute of limitations for Plaintiff's and class members' claims;
- j. The correct method of calculating back overtime pay;
- k. Whether DEFENDANTS' conduct constitutes unfair competition within the meaning of California Business & Professions Code §§17200 and 17203;
- l. Whether DEFENDANTS conduct constitutes unfair business practices within the meaning of California Business & Professions Code §§17200 and 17203;
- m. Whether Plaintiff and class members are entitled to injunctive relief, including restitution;
- n. Whether DEFENDANTS are liable for pre-judgment interest;
- o. Whether DEFENDANTS are liable for attorney's fees and costs; and
- q. Whether DEFENDANTS failure to pay all wages due upon termination of employment was willful and whether Plaintiff and class members are entitled to waiting time wages under California law.

VI.
GENERAL ALLEGATIONS
AS TO CLASS REPRESENTATIVE

24. During the class period, Plaintiff was employed by DEFENDANTS in California as a salaried IT employee and classified by DEFENDANTS as "exempt." Plaintiff regularly worked more than 8 hours per day and in excess of 40 hours a week without payment of overtime wages.

1
2
3
4
5
6
7
8
9
10
11
25. During her employment with DEFENDANTS, Plaintiff and the members of the alleged class were not exempt because, *inter alia*, they are production workers, they did not spend a majority of their time on exempt tasks, they did not supervise two or more subordinates, they did not customarily and regularly exercise discretion and independent judgment in matters of consequence to DEFENDANTS business and they earned less than the minimum amount per hour worked set by Labor Code 515.5(a)(4). DEFENDANTS cannot meet their burden of showing the applicability of any exemption, including, but not limited to, any exemption under state law for administrative, computer software, professional, executive, commissioned sales person, or outside sales person employees.

12
13
14
15
26. Due to scheduling and work demands, DEFENDANTS did not provide Plaintiff or the class with thirty (30) minutes of off duty time for meal periods, nor authorize and permit the class to take 10 minute off duty rest periods, as required by law.

16
17
18
19
20
21
22
23
24
25
26
27
28
VII.

FIRST CAUSE OF ACTION

FAILURE TO PAY OVERTIME WAGES

**Violation of California Labor Code §§ 203, 218, 510, 1194 and 1198
(As Against All Defendants)**

27. Plaintiff hereby re-alleges and incorporates by reference the allegations contained in the preceding paragraphs of the Complaint.

28. California Labor Code §510 defines a day's work as 8 hours and states that any work in excess of 8 hours in one workday and any work in excess of 40 hours in any one workweek must be compensated at the rate of no less than one and one-half times the regular rate of pay.

29. Pursuant to California Labor Code §§ 218 and 1194(a), a Plaintiff may bring a civil

1 action for overtime wages directly against the employer without first filing a claim with the
2 Division of Labor Standards Enforcement (hereinafter "DLSE") and may recover such wages,
3 together with interest thereon, attorney's fees and costs.
4

5 30. Pursuant to California Labor Code §1198, it is unlawful to employ persons for
6 longer than the hours set by the IWC or under conditions prohibited by the applicable IWC Wage
7 Orders. The wage order applicable to Defendants' industry provides for payment of overtime
8 wages equal to one and one-half times an employee's regular rate of pay for all hours worked in
9 excess of 8 hours in a day or 40 hours in a work week or, in certain circumstances, two times an
10 employee's regular rate of pay.
11

12 31. At all times relevant hereto, DEFENDANTS treated Plaintiff and others similarly
13 situated employees as exempt from the protections of the California Labor Code and applicable
14 wage order.
15

16 32. In California, all employees are presumed to be non-exempt and all exemptions are
17 *narrowly* construed against the employer. Ramirez v. Yosemite Water Co., Inc. (1999) 20
18 Cal.4th 785; Nordquist v. McGraw-Hill Broadcasting Co. (1995) 32 Cal.App.4th 555.
19

20 33. DEFENDANTS improperly misclassified Plaintiff and members of the class as
21 exempt from California's overtime laws. DEFENDANTS did so despite the fact that these
22 employees did not meet the exemption criteria under any of the exemptions set forth by
23 California law.
24

25 34. Plaintiff and members of the class regularly worked more than forty (40) hours per
26 week to meet DEFENDANTS job expectations.
27

28 35. As a uniform practice, DEFENDANTS failed to keep a records of hours worked by
its employees as required by California's wage orders and the Labor Code. However, records of

1 the rates of pay for Plaintiff and the class members are in the possession or within the custody
2 and control of DEFENDANTS.

3
4 36. DEFENDANTS owe Plaintiff and the class overtime wages according to proof at
5 the time of trial. Plaintiff is informed and believes, and thereon alleges, that DEFENDANTS
6 knew or should have known that Plaintiff and the class did not qualify as exempt employees and
7 purposely and willfully elected not to pay them all wages earned. Plaintiff, individually and on
8 behalf of all employees similarly situated, requests recovery of overtime compensation according
9 to proof, waiting time wages, interest, attorney's fees and costs pursuant to Labor Code §§203
10 and 1194(a), including waiting time wages, against DEFENDANTS in a sum as provided by the
11 Labor Code and/or other statutes.

12
13 37. Plaintiff has exhausted her administrative remedies under California Labor Code
14 Section 2698-99, et seq. Pursuant to Labor Code § 2698, et seq, Plaintiff brings this action on
15 behalf of herself and other current and former employees seeking recovery of all applicable civil
16 penalties as follows (based on the conduct alleged herein that is in violation of one or more
17 provisions of the California Labor Code):

18
19 a. Where civil penalties are specifically provided in the Labor Code, Plaintiff
20 seeks recovery of such penalties and

21
22 b. Where civil penalties are not established in the Labor Code, Plaintiff seeks
23 recovery of the "default" penalties established in Labor Code § 2699(f).

24 Wherefore, Plaintiff prays for relief as hereinafter set forth.

25 ///

VIII.

SECOND CAUSE OF ACTION

FAILURE TO PROVIDE MEAL/REST BREAKS

Violation of California Labor Code §226.7

38. Plaintiff hereby re-alleges and incorporates by reference the allegations contained in the preceding paragraphs of the Complaint.

39. California Labor Code § 226.7 requires an employer to pay an additional hour's worth of pay for each period in which an off-duty meal and/or rest period is not provided. Pursuant to the wage order applicable to DEFENDANTS industry, employees are entitled to an off-duty meal period of at least thirty (30) minutes in duration during each shift in excess of five (5) hours in duration. Pursuant to the wage order applicable to DEFENDANTS industry, employees are entitled to an off-duty rest break of at least ten (10) minutes in duration for every four (4) hours worked.

40. During the class period, DEFENDANTS failed to provide Plaintiff and the class members with off-duty thirty (30) minute meal periods and off-duty ten (10) minute rest breaks as required under the wage order and Labor Code §226.7. DEFENDANTS also failed to maintain records of meal periods provided as required by California law (Wage Order, Sec. 7).

41. Pursuant to Labor Code §226.7, Plaintiff and the class members are entitled to one (1) hour of wages for every missed meal period and/or rest break, including interest, fees and costs, in an amount to be proved at trial.

Wherefore, Plaintiff prays for relief as hereinafter set forth.

///

IX.

THIRD CAUSE OF ACTION

VIOLATION OF BUSINESS & PROFESSIONS CODE §§17200 and 17203

(As Against All Defendants)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

42. Plaintiff hereby re-alleges and incorporates by reference the allegations contained in the preceding paragraphs of the Complaint.

43. Within the four years preceding the filing of this action, DEFENDANTS have engaged and continues to engage in unfair and/or unlawful business acts and practices in violation of California Business & Professions Code §§17200 and 17203. These acts and practices constitute a continuing and ongoing unfair and/or unlawful business activity defined by Business & Professions Code §17200, and justify the issuance of an injunction, restitution, and other equitable relief pursuant to Business & Professions Code §17203.

44. DEFENDANTS have unlawfully designated Plaintiff and the proposed class as "exempt" employees to avoid the payment of overtime wages and other benefits in violation of Labor Code §200 et seq., Labor Code §500 et seq., Labor Code §1100 et seq., the California Code of Regulations, and the guidelines set forth by the IWC and DLSE.

45. The conduct of DEFENDANTS is inimical to the public welfare since it transgresses remedial civil statutes of this state designed to protect workers from exploitation.

46. DEFENDANTS conduct in misclassifying Plaintiff and other members of the class and failing to pay overtime was unfair within the meaning of §17200 because it was against established public policy and has been pursued to attain an unjustified monetary advantage for DEFENDANTS by creating personal disadvantage and hardship to its employees. As such, DEFENDANTS' business practices and acts have been immoral, unethical, oppressive and

1 unscrupulous.

2
3 47. By and through its unfair and/or unlawful business practices and acts described
4 herein, DEFENDANTS have obtained valuable services from Plaintiff and all persons similarly
5 situated and have deprived Plaintiff and all persons similarly situated of valuable rights and
6 benefits guaranteed by law, all to their detriment.

7
8 48. Plaintiff, and all persons similarly situated, and all persons in interest, are entitled
9 to and do seek such relief as may be necessary to restore to them the money and property which
10 DEFENDANTS have acquired, or of which Plaintiff and class members have been deprived by
11 means of the herein described unfair and/or unlawful business practices.

12
13 49. Plaintiff, and all persons similarly situated, and all persons in interest, are further
14 entitled to and do seek a declaration that the above described business practices are unfair and
15 unlawful, and injunctive relief restraining Defendants from engaging in any of the herein
16 described unfair and/or unlawful business practices at all times in the future.

17 WHEREFORE, Plaintiff, on her own behalf and on behalf of the members of the class,
18 prays for judgment as follows:

- 19 1. For an order certifying the proposed class;
- 20 2. Upon the First Cause of Action, for consequential damages according to proof as set
21 forth in California Labor Code § 1194, *et seq.* (and the applicable wage order) related to unpaid
22 wages due and owing;
- 23 3. Upon the First Cause of Action, for waiting time wages according to proof pursuant
24 to California Labor Code § 203 for all formerly employed members of the class;
- 25 4. Upon the First and Second Causes of Action, for all appropriate penalties for
26 Defendants wage and hour violations under the California Labor Code, authorized pursuant to
27
28

1 Labor Code section 2698, et seq. (Private Attorney General Act).

2
3 5. Upon the Second Cause of Action, for a recovery pursuant to Labor Code § 226.7
4 and the wage order;

5 6. Upon the First, Second and Third Causes of Action, for appropriate injunctive
6 relief, including restitution;

7 7. For pre-judgment interest as allowed by California law;


8 8. For reasonable attorneys fees, expenses and costs as provided by California Labor
9 Code §§ 226, 1194, and 2699; and,
10

11 9. For such other and further relief the Court may deem just and proper.

12 **LAW OFFICES OF THOMAS W.
13 FALVEY**

Dated: May 14, 2010

RIGHETTI LAW FIRM, P.C.

14
15 By: 
16 Matthew Righetti
17 Attorneys for Plaintiff Lindsay