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**ENDORSED
FILED
ALAMEDA COUNTY**

MAR 30 2010

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

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Attorneys for Plaintiffs

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ALAMEDA

**SABRINA PIERCE and ROMI
HUGHES, individually and on behalf of
all others similarly situated,**

Plaintiffs,

vs.

**AT&T CORP., AT&T, INC.,
CINGULAR, CINGULAR
WIRELESS, AT&T SERVICES,
INC.(formerly SBC Services, Inc.),
AT&T MANAGEMENT SERVICES,
LP, AT&T OPERATIONS, INC.,
YELLOWPAGES.COM and DOES 1-
25, inclusive,**

Defendants.

Case No.: **RG10507014**

CLASS ACTION COMPLAINT FOR:

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

INTRODUCTION

This case arises out of DEFENDANTS' failure to pay overtime compensation and failure to

1 provide rest and meal periods to certain California Information-Technology (IT) employees of
2 DEFENDANTS. These IT employees primarily performed non-exempt functions for the
3 DEFENDANTS, were misclassified as "exempt" from California's minimum working condition
4 laws and as a consequence are owed overtime compensation and other benefits earned during the
5 Class Period, which is defined as four years prior to the date of the filing of this complaint, through
6 the date of trial. SABRINA PIERCE and ROMI HUGHES ("Plaintiffs"), individually and on
7 behalf of all others similarly situated, complain and allege on information and belief the following
8 against AT&T CORP., CINGULAR, CINGULAR WIRELESS, AT&T SERVICES, INC.(formerly
9 SBC Services, Inc.), AT&T MANAGEMENT SERVICES, LP, AT&T OPERATIONS, INC,
10 YELLOWPAGES.COM and DOES 1-25, inclusive, (collectively "DEFENDANTS").

11
12
13 1. This is a class action brought on behalf of the following class:

14 All IT employees who held a title that included the words "project manager"
15 (including iterations such as "associate" project manager, "senior" project manager,
16 etc.) and who were suffered or permitted to work for one or more of the
17 DEFENDANTS in California, at any time within the four years preceding the filing of
this lawsuit through the present (hereafter "class").

18 The above class of employees did not receive overtime compensation and was not
19 provided, nor authorized and permitted to take, statutorily mandated meal breaks and/or rest
20 breaks respectively and is similarly situated under California Code of Civil Procedure §382.
21 Plaintiffs seek to recover unpaid overtime compensation, missed meal and rest break wages
22 equivalent to one hour's worth of pay for each missed break, waiting time wages, penalties,
23 interest, attorney's fees and costs for herself and all other present and former employees similarly
24 situated. To the extent that the improper conduct alleged herein violates California Business and
25 Professions Code §§17200, 17203 this action is also brought by the Plaintiffs on behalf of the
26 public.
27
28

1
2 I.

3 JURISDICTION AND VENUE

4 2. This class action is brought pursuant to §382 of the California Code of Civil
5 Procedure. Plaintiffs are informed and believe and based on such information and belief allege
6 that venue is proper in the Alameda County Superior Court because Plaintiffs performed work
7 for DEFENDANTS in said County and because the DEFENDANTS regularly do business in
8 Alameda County and own and operate numerous facilities – and employ numerous putative class
9 members – in Alameda County. The DEFENDANTS’ liability to the Plaintiffs arose in part
10 within Alameda County and some of the wrongful acts complained of occurred in Alameda
11 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. AT&T Inc. (“AT&T”) is a holding company incorporated under the
27 laws of the State of Delaware in 1983. Through a network of related parents, subsidiaries and
28

1 affiliates, DEFENDANTS provide wireline and wireless telecommunications services and
2 equipment, directory advertising, and other products and services to the general public.

3
4 5. At all times relevant to this Complaint, the wage and hour and all related employee
5 compensation policies of DEFENDANTS' locations in California are and were dictated by,
6 controlled by, and ratified by DEFENDANTS.

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

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

23
24 8. Plaintiffs SABRINA PIERCE and ROMI HUGHES at all relevant times relevant
25 were non-exempt employees of DEFENDANTS. Plaintiffs' job duties consisted primarily of work
26 that did not trigger exempt status under California law. Plaintiffs performed all obligations and
27 expectations as required during their employment. Plaintiffs were suffered and permitted to
28

1 perform work for DEFENDANTS in California and are members of the defined class.

2
3 9. The named Plaintiffs and members of the alleged class are/were routinely required
4 to work in excess of eight (8) hours a day and/or forty (40) hours per week without receiving
5 overtime compensation.

6 10. Plaintiffs bring this action on their own behalf and on behalf of all other such
7 current and former employees similarly situated, as well as on behalf of the California public.
8

9 IV.

10 FACTUAL ALLEGATIONS

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

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

20
21 13. The duties of the class members are set forth by uniform written company-wide
22 policies and procedures. California law states that an employee must be paid overtime, equal to
23 1.5 times the employee's regular rate of pay, for all hours worked in excess of 40 per week or 8
24 per day. Members of the alleged class are not exempt and DEFENDANTS cannot meet their
25 burden of showing the applicability of any exemption under California law.

26
27 14. Labor Code §1174(d) and the IWC Order applicable to DEFENDANTS' industry
28 provide that every employer shall keep accurate information with respect to *each employee*

1 including time records showing both when the employee begins and ends each work period and
2 meal periods. When an employer fails to keep such time records, employees may establish the
3 hours worked solely by their testimony and the burden of overcoming such testimony shifts to
4 the employer. Hernandez v. Mendoza (1988) 199 Cal.App.3d 721.

5
6 15. While Plaintiffs are unable to state at this time the exact amount owing to the class,
7 Plaintiffs propose to obtain such information by appropriate and focused discovery proceedings
8 to be taken promptly in this action, and request that damages or restitution be awarded according
9 to proof thus obtained and presented to the Court.
10

11 V.

12 **CLASS ACTION ALLEGATIONS**

13 16. Plaintiffs bring this action individually and as a class action on behalf of the class
14 set forth in paragraph 1 herein.

15
16 17. Plaintiffs' claims are typical of the claims of the proposed class because Plaintiffs
17 and all the class members suffered similar harm as a consequence of DEFENDANTS' conduct,
18 as alleged, and the wage hour payroll policies and practices with respect to exempt status and
19 overtime entitlement for overtime hours worked are and were uniform between class members
20 throughout California.

21
22 18. Plaintiffs are representative parties who will fully and adequately protect the
23 interests of the class members. Plaintiffs have retained counsel competent in both class action
24 and employment litigation. Plaintiffs have no interests that are contrary to or in conflict with
25 those of the class he seeks to represent.

26
27 19. The members of the class are so numerous that joinder of all members would be
28 unfeasible and not practicable. The number of class members is unknown to Plaintiffs at this

1 time; however, it is estimated that the entire class is greater than 100 individuals. The identity of
2 individuals qualifying for class membership is readily ascertainable via inspection of the
3 personnel records and other documents maintained by DEFENDANTS (as are the days worked
4 and the regular rate of pay for each class member).
5

6 20. A class action is superior to other available means for the fair and efficient
7 adjudication of this lawsuit. Individual employees such as Plaintiffs have a difficult time
8 prosecuting an individual action against large corporate employers such as DEFENDANTS.
9 Even if any class member could afford individual litigation against multi-national corporations
10 like DEFENDANTS, it would be unduly burdensome to the court system. Individual litigation
11 of hundreds of similar claims in scores of counties magnifies the delay and expense to all parties
12 and the court system. By contrast, a class action presents far fewer management difficulties and
13 affords the benefits of unitary adjudication, economies of scale, and comprehensive supervision
14 by a single court. Concentrating this litigation in one forum will promote judicial economy and
15 parity among the claims of individual class members and judicial consistency in rulings. Notice
16 of the pendency and any resolution of this action can be efficiently provided to class members by
17 mail, print, broadcast, internet, and/or multimedia publication. Requiring each class member to
18 both establish individual liability and pursue an individual remedy would discourage the
19 assertion of lawful claims by employees who would be disinclined to pursue an action against
20 their present and/or former employer for fear of retaliation and permanent damage to their careers
21 at present and/or subsequent employment. Proof of a common business practice or factual
22 pattern, of which the named Plaintiffs experienced, is representative of the alleged class and will
23 establish the right of each of the members of the alleged class to recovery on the claims alleged
24 herein.
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1 21. The prosecution of separate actions by individual class members, even if possible,
2
3 would create: (a) a substantial risk of inconvenient or varying verdicts or adjudications with respect
4 to the individual class members against the DEFENDANTS herein; and/or (b) legal determinations
5 with respect to individual class members which would, as a practical matter, be dispositive of the
6 other class members not parties to the adjudications or which would substantially impair or impede
7 the ability of class members to protect their interests. Further, the claims of the individual members
8 of the class are not sufficiently large to warrant vigorous individual prosecution considering all of the
9 concomitant costs and expenses attending thereto. Plaintiffs are also unaware of any difficulties that
10 are likely to be encountered in the management of this action that would preclude its maintenance as
11 a class action.
12

13 22. This type of case is uniquely well-suited for class treatment since the employer's
14 practices were uniform and the burden is on the employer to prove any alleged exemption.
15

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

- 18 a. Whether those in the alleged class were uniformly classified as exempt,
19 in violation of California Labor Code and applicable IWC wage orders;
20 b. Whether DEFENDANTS failed to pay Plaintiffs and class members all
21 overtime compensation due to them by virtue of their uniform designation
22 of employees as exempt in violation of California Labor Code and
23 applicable IWC wage order;
24 c. Whether Plaintiffs and class members were expected to and/or mandated to
25 regularly work overtime;
26 d. Whether the class met the requirements for any exemption pled by
27 DEFENDANTS;
28 e. Whether DEFENDANTS failed to either provide meal periods or pay
 Plaintiffs and class members meal break wages per California Labor Code
 §226.7;
 f. The correct statute of limitations for Plaintiffs' and class members' claims;
 g. The correct method of calculating back overtime pay;
 h. Whether DEFENDANTS, or any of them, are joint employers of Plaintiffs

1 and the class members;

- 2
- 3 i. Whether DEFENDANTS, or any of them, are successors in interest to any
- 4 of the other DEFENDANTS;
- 5 j. Whether DEFENDANTS' conduct constitutes unfair competition within
- 6 the meaning of California Business & Professions Code §§17200 and
- 7 17203;
- 8 k. Whether DEFENDANTS conduct constitutes unfair business practices
- 9 within the meaning of California Business & Professions Code §§17200
- 10 and 17203;
- 11 l. Whether Plaintiffs and class members are entitled to injunctive relief,
- 12 including restitution;
- 13 m. Whether DEFENDANTS are liable for pre-judgment interest;
- 14 n. Whether DEFENDANTS are liable for attorney's fees and costs; and
- 15 o. Whether DEFENDANTS failure to pay all wages due upon termination of
- 16 employment was willful and whether Plaintiffs and class members are
- 17 entitled to waiting time wages under California law.

18 **VI.**

19 **GENERAL ALLEGATIONS**

20 **AS TO CLASS REPRESENTATIVES**

21 24. During the class period, Plaintiffs and members of the class were suffered and

22 permitted to work for DEFENDANTS in California as salaried IT employees and classified by

23 DEFENDANTS as "exempt." Plaintiffs regularly worked more than 8 hours per day and in

24 excess of 40 hours a week without receiving payment of overtime wages.

25 25. During their employment with DEFENDANTS, Plaintiffs and the members of the

26 alleged class were not exempt because, *inter alia*, they did not meet the criteria for exempt status

27 under California law.

28 26. Due to scheduling and work demands, DEFENDANTS did not provide Plaintiffs or

the class members with thirty (30) minutes of off duty time for required meal periods, nor

authorize and permit the class to take 10 minute off duty rest periods, as required by law. Nor

1 did DEFENDANTS ever pay Plaintiffs or the putative class one hour of wages as compensation
2 for missed meal breaks and/or rest breaks.
3

4 VII.

5 FIRST CAUSE OF ACTION

6 FAILURE TO PAY OVERTIME WAGES

7 Violation of California Labor Code §§ 203, 218, 510, 1194 and 1198

8 (As Against All DEFENDANTS)

9 27. Plaintiffs hereby re-allege and incorporate by reference the allegations contained
10 in the preceding paragraphs of the Complaint.
11

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

16 29. Pursuant to California Labor Code §§ 218 and 1194(a), a Plaintiff may bring a civil
17 action for overtime wages directly against the employer without first filing a claim with the
18 Division of Labor Standards Enforcement (hereinafter "DLSE") and may recover such wages,
19 together with interest thereon, attorney's fees and costs.
20

21 30. Pursuant to California Labor Code §1198, it is unlawful to employ persons for
22 longer than the hours set by the IWC or under conditions prohibited by the applicable IWC Wage
23 Orders. The wage order applicable to DEFENDANTS' industry provides for payment of
24 overtime wages equal to one and one-half times an employee's regular rate of pay for all hours
25 worked in excess of 8 hours in a day or 40 hours in a work week or, in certain circumstances, two
26 times an employee's regular rate of pay.
27

28 31. At all times relevant hereto, DEFENDANTS treated Plaintiffs and others similarly

1 situated class members as exempt from the protections of the California Labor Code and
2 applicable wage order.
3

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

7 33. DEFENDANTS improperly misclassified Plaintiffs and members of the class as
8 exempt from California's overtime laws. DEFENDANTS did so despite the fact that these class
9 members did not meet the exemption criteria under any of the exemptions set forth by California
10 law.
11

12 34. Plaintiffs and members of the class regularly worked more than forty (40) hours per
13 week to meet DEFENDANTS job expectations.
14

15 35. As a uniform practice, DEFENDANTS failed to keep records of hours worked by
16 its employees as required by California's wage orders and the Labor Code. However, records of
17 the rates of pay for Plaintiffs and the class members are in the possession or within the custody
18 and control of DEFENDANTS.

19 36. DEFENDANTS owe Plaintiffs and the class overtime wages according to proof at
20 the time of trial. Plaintiffs are informed and believe, and thereon allege, that DEFENDANTS
21 knew or should have known that Plaintiffs and the class did not qualify as exempt employees and
22 purposely and willfully elected not to pay them all wages earned. Plaintiffs, individually and on
23 behalf of all employees similarly situated, request recovery of overtime compensation according
24 to proof, waiting time wages, interest, attorney's fees and costs pursuant to Labor Code §§203
25 and 1194(a), including waiting time wages, against DEFENDANTS in a sum as provided by the
26 Labor Code and/or other statutes.
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37. Plaintiffs have taken necessary steps to exhaust their administrative remedies under California Labor Code Section 2698-99, et seq. Pursuant to Labor Code § 2698, et seq, Plaintiffs bring this action on behalf of themselves and other current and former employees seeking recovery of all applicable civil penalties as follows (based on the conduct alleged herein that is in violation of one or more provisions of the California Labor Code):

- a. Where civil penalties are specifically provided in the Labor Code, Plaintiffs seek recovery of such penalties and
- b. Where civil penalties are not established in the Labor Code, Plaintiffs seek recovery of the “default” penalties established in Labor Code § 2699(f).

Wherefore, Plaintiffs pray for relief as hereinafter set forth.

VIII.

SECOND CAUSE OF ACTION

FAILURE TO PROVIDE MEAL/REST BREAKS

(As Against All DEFENDANTS)

Violation of California Labor Code §226.7

38. Plaintiffs hereby re-allege 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

1 four (4) hours worked.

2
3 40. During the class period, DEFENDANTS failed to provide Plaintiffs and the class
4 members with off-duty thirty (30) minute meal periods and off-duty ten (10) minute rest breaks
5 as required under the wage order and Labor Code §226.7. Nor did DEFENDANTS pay the
6 required one hour of wages due each violation. DEFENDANTS also failed to maintain records
7 of meal periods provided as required by California law.

8
9 41. Pursuant to Labor Code §226.7, Plaintiffs and the class members are entitled to one
10 (1) hour of wages for every missed meal period and/or rest break, including interest, fees and
11 costs, in an amount to be proved at trial.

12 Wherefore, Plaintiffs pray for relief as hereinafter set forth.

13
14 **IX.**

15 **THIRD CAUSE OF ACTION**

16 **VIOLATION OF BUSINESS & PROFESSIONS CODE §§17200 and 17203**

17 **(As Against All DEFENDANTS)**

18 42. Plaintiffs hereby re-allege and incorporate by reference the allegations contained
19 in the preceding paragraphs of the Complaint.

20
21 43. Within the four years preceding the filing of this action, DEFENDANTS have
22 engaged and continues to engage in unfair and/or unlawful business acts and practices in
23 violation of California Business & Professions Code §§17200 and 17203. These acts and
24 practices constitute a continuing and ongoing unfair and/or unlawful business activity defined by
25 Business & Professions Code §17200, and justify the issuance of an injunction, restitution, and
26 other equitable relief pursuant to Business & Professions Code §17203.

27
28 44. DEFENDANTS have unlawfully designated Plaintiffs and the proposed class as

1 "exempt" employees to avoid the payment of overtime wages and other benefits in violation of
2 Labor Code §200 et seq., Labor Code §500 et seq., Labor Code §1100 et seq., the California
3 Code of Regulations, and the guidelines set forth by the IWC and California Division of Labor
4 Standards Enforcement.
5

6 45. The conduct of DEFENDANTS is inimical to the public welfare since it
7 transgresses remedial civil statutes of this state designed to protect workers from exploitation.
8

9 46. DEFENDANTS conduct in misclassifying Plaintiffs and other members of the class
10 and failing to pay overtime was unfair within the meaning of §17200 because it was against
11 established public policy and has been pursued to attain an unjustified monetary advantage for
12 DEFENDANTS by creating personal disadvantage and hardship to its employees. As such,
13 DEFENDANTS' business practices and acts have been immoral, unethical, oppressive and
14 unscrupulous.
15

16 47. By and through its unfair and/or unlawful business practices and acts described
17 herein, DEFENDANTS have obtained valuable services from Plaintiffs and all persons similarly
18 situated and have deprived Plaintiffs and all persons similarly situated of valuable rights and
19 benefits guaranteed by law, all to their detriment.
20

21 48. Plaintiffs, and all persons similarly situated, and all persons in interest, are entitled
22 to and do seek such relief as may be necessary to restore to them the money and property which
23 DEFENDANTS have acquired, or of which Plaintiffs and class members have been deprived by
24 means of the herein described unfair and/or unlawful business practices.
25

26 49. Plaintiffs, and all persons similarly situated, and all persons in interest, are further
27 entitled to and do seek a declaration that the above described business practices are unfair and
28 unlawful, and injunctive relief restraining DEFENDANTS from engaging in any of the herein

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described unfair and/or unlawful business practices at all times in the future.

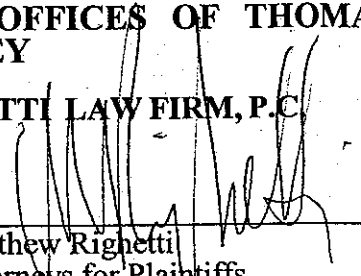
WHEREFORE, Plaintiffs, on their own behalf and on behalf of the members of the class, pray for judgment as follows:

1. For an order certifying the proposed class;
 2. Upon the First Cause of Action, for damages according to proof as set forth in California Labor Code § 1194, *et seq.* (and the applicable wage order) related to unpaid wages due and owing;
 3. Upon the First Cause of Action, for waiting time wages according to proof pursuant to California Labor Code § 203 for all formerly employed members of the class;
 4. Upon the First and Second Causes of Action, for all appropriate penalties for DEFENDANTS' wage and hour violations under the California Labor Code, authorized pursuant to Labor Code section 2698, *et seq.* (Private Attorney General Act).
 5. Upon the Second Cause of Action, for a recovery of wages pursuant to Labor Code § 226.7 and the wage order;
 6. Upon the First, Second and Third Causes of Action, for appropriate injunctive relief, including restitution;
 7. For pre-judgment interest as allowed by California law;
 8. For reasonable attorneys fees, expenses and costs as provided by California law;
- and
9. For such other and further relief the Court may deem just and proper.

Dated: March 29, 2010

LAW OFFICES OF THOMAS W. FALVEY

RIGHETTI LAW FIRM, P.C.

By: 
Matthew Righetti
Attorneys for Plaintiffs