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**ENDORSED
FILED
ALAMEDA COUNTY**

APR 28 2010

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

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Attorneys for Plaintiff

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ALAMEDA

DELINDA VILES, individually and on
behalf of all others similarly situated,

Case No.: **RG10512160**

Plaintiff,

CLASS ACTION COMPLAINT FOR:

vs.

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

AT&T CORP., AT&T SERVICES, INC.(formerly SBC Services, Inc.), AT&T MANAGEMENT SERVICES, LP, AT&T OPERATIONS, INC., YELLOWPAGES.COM, AT&T MOBILITY SERVICES, LLC (formerly doing business as Cingular Wireless, LLC) and DOES 1-25, inclusive,

Defendants.

INTRODUCTION

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

1 provide rest and meal periods to certain California Business Manager employees of
2 DEFENDANTS. These Business Manager employees primarily performed non-exempt functions
3 for the DEFENDANTS, were misclassified as "exempt" from California's minimum working
4 condition laws and as a consequence are owed overtime compensation and other benefits earned
5 during the Class Period, which is defined as four years prior to the date of the filing of this
6 complaint, through the date of trial. DELINDA VILES ("Plaintiff"), individually and on behalf of
7 all others similarly situated, complains and alleges on information and belief the following against
8 AT&T CORP., AT&T SERVICES, INC.(formerly SBC Services, Inc.), AT&T MANAGEMENT
9 SERVICES, LP, AT&T OPERATIONS, INC, YELLOWPAGES.COM, AT&T MOBILITY
10 SERVICES, LLC (formerly doing business as Cingular Wireless, LLC) and DOES 1-25, inclusive,
11 (collectively "DEFENDANTS").
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14 1. This is a class action brought on behalf of the following class:
15

16 All Business Manager employees who were suffered or permitted to work for one or
17 more of the 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 neither
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 Plaintiff seeks 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 authorized by LC § 2698, interest, attorney's fees and costs for herself and all other present and
24 former employees similarly situated. To the extent that the improper conduct alleged herein
25 violates California Business and Professions Code §§17200, 17203 this action is also brought by
26 the Plaintiff on behalf of the public.
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I.

JURISDICTION AND VENUE

2. This class action is brought pursuant to §382 of the California Code of Civil Procedure. Plaintiff is informed and believes and based on such information and belief alleges that venue is proper in the Alameda County Superior Court because Plaintiff performed work for DEFENDANTS in said County and because the DEFENDANTS regularly do business in Alameda County and own and operate numerous facilities – and employ numerous putative class members – in Alameda County. The DEFENDANTS’ liability to the Plaintiff arose in part within Alameda County and some of the wrongful acts complained of occurred in Alameda County.

II.

NO FEDERAL JURISDICTION EXISTS

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

III.

PARTIES

4. DEFENDANTS are doing business in the State of California. Throughout the class period, DEFENDANTS employed hundreds of employees in California within the class definition set forth herein. Through a network of related parents, subsidiaries and affiliates, DEFENDANTS provide wireline and wireless telecommunications services and equipment,

1 directory advertising, and other products and services to the general public.

2
3 5. At all times relevant to this Complaint, the wage and hour and all related employee
4 compensation policies of DEFENDANTS' locations in California are and were dictated by,
5 controlled by, and ratified by DEFENDANTS.

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

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

22
23 8. Plaintiff DELINDA VILES at all relevant times relevant were non-exempt
24 employees of DEFENDANTS. Plaintiff's job duties consisted primarily of work that did not
25 trigger exempt status under California law. Plaintiff performed all obligations and expectations as
26 required during her employment. Plaintiff was suffered and permitted to perform work for
27 DEFENDANTS in California and are members of the defined class.

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

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

9 **FACTUAL ALLEGATIONS**

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

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

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

25 14. Labor Code §1174(d) and the IWC Order applicable to DEFENDANTS' industry
26 provide that every employer shall keep accurate information with respect to *each employee*
27 including time records showing both when the employee begins and ends each work period and
28

1 meal periods. When an employer fails to keep such time records, employees may establish the
2 hours worked solely by their testimony and the burden of overcoming such testimony shifts to the
3 employer. Hernandez v. Mendoza (1988) 199 Cal.App.3d 721.

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

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10 V.

11 **CLASS ACTION ALLEGATIONS**

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

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

19 18. Plaintiff is a representative party who will fully and adequately protect the interests
20 of the class members. Plaintiff has retained counsel competent in both class action and
21 employment litigation. Plaintiff has no interests that are contrary to or in conflict with those of
22 the class she seeks to represent.

23 19. The members of the class are so numerous that joinder of all members would be
24 unfeasible and not practicable. The number of class members is unknown to Plaintiff at this
25 time; however, it is estimated that the entire class is greater than 100 individuals. The identity of
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1 individuals qualifying for class membership is readily ascertainable via inspection of the
2 personnel records and other documents maintained by DEFENDANTS (as are the days worked
3 and the regular rate of pay for each class member).
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5 20. A class action is superior to other available means for the fair and efficient
6 adjudication of this lawsuit. Individual employees such as Plaintiff have a difficult time
7 prosecuting an individual action against large corporate employers such as DEFENDANTS.
8 Even if any class member could afford individual litigation against multi-national corporations
9 like DEFENDANTS, it would be unduly burdensome to the court system. Individual litigation of
10 hundreds of similar claims in scores of counties magnifies the delay and expense to all parties
11 and the court system. By contrast, a class action presents far fewer management difficulties and
12 affords the benefits of unitary adjudication, economies of scale, and comprehensive supervision
13 by a single court. Concentrating this litigation in one forum will promote judicial economy and
14 parity among the claims of individual class members and judicial consistency in rulings. Notice
15 of the pendency and any resolution of this action can be efficiently provided to class members by
16 mail, print, broadcast, internet, and/or multimedia publication. Requiring each class member to
17 both establish individual liability and pursue an individual remedy would discourage the
18 assertion of lawful claims by employees who would be disinclined to pursue an action against
19 their present and/or former employer for fear of retaliation and permanent damage to their careers
20 at present and/or subsequent employment. Proof of a common business practice or factual
21 pattern, of which the named Plaintiff experienced, is representative of the alleged class and will
22 establish the right of each of the members of the alleged class to recovery on the claims alleged
23 herein.
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27 21. The prosecution of separate actions by individual class members, even if possible,
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1 would create: (a) a substantial risk of inconvenient or varying verdicts or adjudications with respect
2 to the individual class members against the DEFENDANTS herein; and/or (b) legal determinations
3 with respect to individual class members which would, as a practical matter, be dispositive of the
4 other class members not parties to the adjudications or which would substantially impair or impede
5 the ability of class members to protect their interests. Further, the claims of the individual members
6 of the class are not sufficiently large to warrant vigorous individual prosecution considering all of the
7 concomitant costs and expenses attending thereto. Plaintiff is also unaware of any difficulties that
8 are likely to be encountered in the management of this action that would preclude its maintenance as
9 a class action.
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12 22. This type of case is uniquely well-suited for class treatment since the employer's
13 practices were uniform and the burden is on the employer to prove any alleged exemption.

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

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- i. Whether DEFENDANTS, or any of them, are successors in interest to any of the other DEFENDANTS;
 - j. Whether DEFENDANTS' conduct constitutes unfair competition within the meaning of California Business & Professions Code §§17200 and 17203;
 - k. Whether DEFENDANTS conduct constitutes unfair business practices within the meaning of California Business & Professions Code §§17200 and 17203;
 - l. Whether Plaintiff and class members are entitled to injunctive relief, including restitution;
 - m. Whether DEFENDANTS are liable for pre-judgment interest;
 - n. Whether DEFENDANTS are liable for attorney's fees and costs; and
 - o. 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.

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VI.
GENERAL ALLEGATIONS
AS TO CLASS REPRESENTATIVE

24. During the class period, Plaintiff and members of the class were suffered and permitted to work for DEFENDANTS in California and classified by DEFENDANTS as "exempt." Plaintiff regularly worked more than 8 hours per day and in excess of 40 hours a week without receiving payment of overtime wages.

25. During her employment with DEFENDANTS, Plaintiff and the members of the alleged class were not exempt because, *inter alia*, they did not meet the criteria for exempt status under California law.

26. Due to scheduling and work demands, DEFENDANTS neither provided Plaintiff or the class members with thirty (30) minutes of off duty time for required meal periods, nor authorized and permitted the class to take 10 minute off duty rest periods, as required by law DEFENDANTS never paid Plaintiff or the class one hour of wages as compensation for missed

1 meal breaks and/or rest breaks.

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3 VII.

4 FIRST CAUSE OF ACTION

5 FAILURE TO PAY OVERTIME WAGES

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

7 (As Against All DEFENDANTS)

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

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

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

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

24 31. At all times relevant hereto, DEFENDANTS treated Plaintiff and others similarly
25 situated class members as exempt from the protections of the California Labor Code and
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1 applicable wage order.

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

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

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

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

15 36. DEFENDANTS owe Plaintiff and the class overtime wages according to proof at
16 the time of trial. Plaintiff is informed and believes, and thereon alleges, that DEFENDANTS
17 knew or should have known that Plaintiff and the class did not qualify as exempt employees and
18 purposely and willfully elected not to pay them all wages earned. Plaintiff, individually and on
19 behalf of all employees similarly situated, requests recovery of overtime compensation according
20 to proof, waiting time wages, interest, penalties allowed by LC § 2698, attorney's fees and costs
21 pursuant to Labor Code §§203 and 1194(a), including waiting time wages, against
22 DEFENDANTS in a sum as provided by the Labor Code and/or other statutes.

23 37. Plaintiff has taken necessary steps to exhaust her administrative remedies under
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1 California Labor Code Section 2698-99, et seq. Pursuant to Labor Code § 2698, et seq, Plaintiff
2 brings this action on behalf of herself and other current and former employees seeking recovery
3 of all applicable civil penalties as follows (based on the conduct alleged herein that is in violation
4 of one or more provisions of the California Labor Code):

6 a. Where civil penalties are specifically provided in the Labor Code, Plaintiff
7 seeks recovery of such penalties and

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

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

12 **VIII.**

13 **SECOND CAUSE OF ACTION**

14 **FAILURE TO PROVIDE MEAL/REST BREAKS**

15 **(As Against All DEFENDANTS)**

16 **Violation of California Labor Code §226.7**

17
18 38. Plaintiff hereby re-alleges and incorporates by reference the allegations contained
19 in the preceding paragraphs of the Complaint.

20 39. California Labor Code § 226.7 requires an employer to pay an additional hour's
21 worth of pay for each period in which an off-duty meal and/or rest period is not provided.
22 Pursuant to the wage order applicable to DEFENDANTS industry, employees are entitled to an
23 off-duty meal period of at least thirty (30) minutes in duration during each shift in excess of five
24 (5) hours in duration. Pursuant to the wage order applicable to DEFENDANTS industry,
25 employees are entitled to an off-duty rest break of at least ten (10) minutes in duration for every
26 four (4) hours worked.
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1 Labor Code §200 et seq., Labor Code §500 et seq., Labor Code §1100 et seq., the California
2 Code of Regulations, and the guidelines set forth by the IWC and California Division of Labor
3 Standards Enforcement.
4

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

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

14 47. By and through its unfair and/or unlawful business practices and acts described
15 herein, DEFENDANTS have obtained valuable services from Plaintiff and all persons similarly
16 situated and have deprived Plaintiff and all persons similarly situated of valuable rights and
17 benefits guaranteed by law, all to their detriment.
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19 48. Plaintiff, and all persons similarly situated, and all persons in interest, are entitled
20 to and do seek such relief as may be necessary to restore to them the money and property which
21 DEFENDANTS have acquired, or of which Plaintiff and class members have been deprived by
22 means of the herein described unfair and/or unlawful business practices.
23

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

1 WHEREFORE, Plaintiff, on her own behalf and on behalf of the members of the class,
2 prays for judgment as follows:
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4 1. For an order certifying the proposed class;

5 2. Upon the First Cause of Action, for damages according to proof as set forth in
6 California Labor Code § 1194, *et seq.* (and the applicable wage order) related to unpaid wages
7 due and owing;

8 3. Upon the First Cause of Action, for waiting time wages according to proof pursuant
9 to California Labor Code § 203 for all formerly employed members of the class;

10 4. Upon the First and Second Causes of Action, for all appropriate penalties for
11 DEFENDANTS' wage and hour violations under the California Labor Code, authorized pursuant
12 to Labor Code section 2698, *et seq.* (Private Attorney General Act).
13

14 5. Upon the Second Cause of Action, for a recovery of wages pursuant to Labor Code
15 § 226.7 and the wage order;

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

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

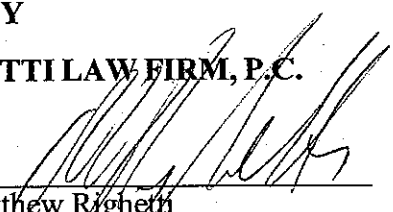
19 8. For reasonable attorneys fees, expenses and costs as provided by California law; and
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21 9. For such other and further relief the Court may deem just and proper.
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25 Dated: April 27, 2010

LAW OFFICES OF THOMAS W.
FALVEY

RIGHETTI LAW FIRM, P.C.

26
27 By: 
28 Matthew Righetti
Attorneys for Plaintiff