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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

Timothy Scott, Patricia Gilchrist, Karen  
Fisher, Helen Maldonado-Valtierra, Judy  
Duff, John Griffin, Kenneth Rhodes, Judy  
Dougherty, John Kelly, Richard Walshon, and  
Dan Koval, on behalf of themselves and all  
others similarly situated,

Plaintiffs,

v.

AT&T Inc., AT&T Services, Inc. and the  
AT&T Pension Benefit Plan,

Defendants.

**SECOND AMENDED CLASS ACTION  
COMPLAINT**

Case No. 3:20-cv-07094-JD

Plaintiffs Timothy Scott, Patricia Gilchrist, Karen Fisher, Helen Maldonado-Valtierra, Judy  
Duff, John Griffin, Kenneth Rhodes, Judy Dougherty, John Kelly, Richard Walshon, and Dan Koval  
by and through their attorneys, on behalf of themselves and all others similarly situated, allege the  
following:

**I. NATURE OF THE ACTION**

1  
2 1. This is a civil enforcement action brought under sections 502(a)(2) and 502(a)(3) of  
3 the Employee Retirement Income Security Act of 1974 (“ERISA”), 29 U.S.C. §§ 1132(a)(2) and  
4 (a)(3), concerning Defendants’ violations of ERISA’s actuarial equivalence, anti-forfeiture, and joint  
5 and survivor annuity requirements with respect to the AT&T Pension Benefit Plan (the “AT&T  
6 Plan” or the “Plan”).

7 2. Plaintiffs and the Class are vested participants in the AT&T Plan, which denies them  
8 their full ERISA-protected vested pension benefits. Specifically, Plaintiffs and the Class are deprived  
9 of their vested accrued benefits if they receive pension benefits in the form of a Joint and Survivor  
10 Annuity. This is because the Plan’s terms reduce these alternative forms of benefits using “Joint and  
11 Survivor Annuity Factors” which result in Plan participants receiving less than the actuarial  
12 equivalent of their vested accrued benefit, contrary to ERISA.

13 3. A participant’s pension benefit is generally expressed as a single life annuity because  
14 it pays a monthly benefit to the participant for her entire life (i.e., from the time she retires until her  
15 death).<sup>1</sup>

16 4. In addition, ERISA-protected pension plans must offer married participants the option  
17 of receiving a payment stream for their life and their spouse’s life after the retiree dies; this is a  
18 “joint and survivor annuity.” ERISA § 205(a)-(d), 29 U.S.C. § 1055(a)-(d). The joint annuity is  
19 expressed as a percentage of the benefit paid during the retiree’s life. For married participants, the  
20 joint and survivor annuity is the default form of pension payment unless the spouse consents to the  
21 participant receiving a single life annuity.

22 5. Relevant here, the Plan’s Joint and Survivor Annuity Factors reduce benefits for  
23 Plaintiffs and the Class to less than the actuarial equivalent amount of a participant’s benefit  
24 expressed as a single life annuity at the age of retirement. In other words, married participants  
25 receiving a Joint and Survivor annuity get less than a participant receiving a Single Life Annuity.  
26 For example, if a participant’s single life annuity benefit is \$10,000 per month at retirement at age

27 \_\_\_\_\_  
28 <sup>1</sup> An annuity provides retirement benefits paid every month from the time the participant retires until she dies.

1 65, and she is married, her default form of benefit is a 50% Joint and Survivor Annuity, which is  
2 reduced by a factor of 0.90 for most programs under the Plan. As a result, the participant's monthly  
3 benefit is 90% of \$10,000 per month, or \$9,000 per month. ERISA prohibits this level of reduction  
4 because the actuarial equivalent benefit she is entitled to receive under ERISA is approximately  
5 \$9,200 per month if her spouse is the same age (65) when the participant retires.

6 6. The Plan maintains the Joint and Survivor Annuity Factors (set forth below in Table  
7 1) that reduce benefits to less than the actuarial equivalent of the participant's Single Life Annuity  
8 benefit, even though the applicable Treasury regulations require that "[a] qualified joint and survivor  
9 annuity must be at least the actuarial equivalent of the [single life annuity]. Equivalence may be  
10 determined, on the basis of consistently applied reasonable actuarial factors[.]" 26 CFR § 1.401(a)-  
11 11(b)(2).

12 7. Actuarial equivalence is a computation that is designed to ensure that, all else being  
13 equal, all forms of benefit payments have the same economic value as each other.

14 8. Generally, an actuarial equivalence computation considers both an interest rate and  
15 the expected longevity of a participant. The interest rate discounts the value of future pension  
16 payments to reflect the time value of money, while the mortality table provides the expected  
17 likelihood of that future payment being paid to the participant or her survivor based on published  
18 tables showing the statistical life expectancy of a person at a given age.

19 9. This case concerns the Joint and Survivor Annuity Factors used by the AT&T Plan,  
20 which improperly reduce pension benefits owed to Plaintiffs and the Class in violation of ERISA's  
21 actuarial equivalence requirements and regulations.

22 10. Under ERISA, the joint and survivor annuities paid must be "the actuarial equivalent  
23 of a single annuity for the life of the participant." ERISA §§ 205(d)(1)(B), (d)(2)(A)(ii), 29 U.S.C.  
24 §§ 1055(d)(1)(B), (d)(2)(A)(ii). This means that other annuity forms must have the same economic  
25 value as the single life annuity.

26 11. ERISA also requires that, if an employee's accrued benefit is to be determined as an  
27 amount other than an annual benefit commencing at normal retirement age [of 65] . . . the  
28

1 employee's accrued benefit . . . shall be the actuarial equivalent of such benefit[.]” ERISA §  
2 204(c)(3), 29 U.S.C. § 1054(c)(3).

3 12. In addition, ERISA § 203(a), 29 U.S.C. § 1053(a), provides that an employee's right  
4 to her vested retirement benefits is non-forfeitable and states that paying a participant less than the  
5 actuarial equivalent value of her accrued benefit results in an illegal forfeiture of vested benefits.  
6 Thus, the Plan terms that reduce participant benefits to less than their actuarially equivalent value  
7 violate the anti-forfeiture requirement set forth in ERISA § 203(a), 29 U.S.C. § 1053(a).

8 13. In sum, ERISA contains many statutory requirements that mandate that joint and  
9 survivor annuities paid to married retirees must be actuarially equivalent to the single life annuity  
10 available to them at a particular retirement age. In violation of ERISA, the Joint and Survivor  
11 Annuity Factors set forth in the AT&T Plan reduce benefits for Plaintiffs and the Class below their  
12 actuarial equivalent value.

13 14. Specifically, the Plan provides participants Joint and Survivor Annuities that are  
14 worth less than their Single Life Annuity at retirement. This violates: (i) the joint and survivor  
15 annuity rules at ERISA § 205(a)-(d), 29 U.S.C. § 1055(a)-(d); (ii) the actuarial equivalence  
16 requirement at ERISA § 204(c)(3), 29 U.S.C. § 1054(c)(3); and (iii) the anti-forfeiture requirements  
17 set forth in ERISA § 203(a), 29 U.S.C. § 1053(a).

18 15. To the best of Plaintiffs' knowledge based on the available information, the Joint and  
19 Survivor Annuity Factors in the AT&T Plan generally applicable to the Class have not been updated  
20 in over a decade—and in some cases reflect assumptions 50 years out of date—despite dramatic  
21 increases in longevity amongst the American public. Because the Joint and Survivor Annuity Factors  
22 have not been updated to be in line with reasonable actuarial assumptions, they do not yield  
23 actuarially equivalent payments to Class members as required by ERISA. As a result, Defendants  
24 have improperly reduced Class members' vested pension benefits in violation of ERISA §§ 203(a),  
25 204(c)(3), 205(d)(1)(B), and 205(d)(2)(A)(ii), 29 U.S.C. §§ 1053(a), 1054(c)(3), and 1055(d)(1)(B),  
26 and 1055(d)(2)(A)(ii)).

27 16. When retiring or deciding whether to retire, Plan participants like Plaintiffs rely on  
28 information about their retirement options under the Plan provided by Defendants. Defendants

1 incorporate the Joint and Survivor Annuity Factors into such disclosures, leading Plan participants to  
2 believe that they are receiving benefits that are as valuable as the law requires, when in fact those  
3 benefits are less valuable than what ERISA provides. Similarly, Defendants fail to inform  
4 participants that they are receiving benefits that are less valuable than what the law requires.

5 17. The members of the Class are participants of the AT&T Plan that meet the class  
6 definition set forth below, and the beneficiaries of those participants. Class members are harmed by  
7 Defendants' calculation and payment of benefits that are less than the actuarial equivalent of their  
8 protected retirement benefits, in violation of ERISA.

9 18. The Class members are additionally harmed by Defendants' disclosures because  
10 Class Members do not receive accurate information that is mandated by law and are unable to plan  
11 for their retirement without misimpressions about the value of benefits available to them under  
12 ERISA.

13 19. Plaintiffs bring this action on behalf of the Class pursuant to ERISA § 502(a)(2) and  
14 (a)(3), 29 U.S.C. 1132(a)(2) and (a)(3) for all appropriate equitable relief, including but not limited  
15 to: a declaration that the Plan's Joint and Survivor Annuity Factors violate ERISA's actuarial  
16 equivalence and non-forfeitability requirements as to the Class; an injunction requiring Plan  
17 fiduciaries to ensure that the Plan pays actuarially equivalent benefits to all Class members; an  
18 injunction requiring AT&T Inc. to amend the Plan terms to comply with ERISA; reformation of the  
19 Plan as to the Class to bring its terms into compliance with ERISA; and recalculation of benefits for  
20 all Class members who received a Joint and Survivor Annuity Benefit, and payment to them of the  
21 amounts owed under an ERISA-compliant plan.

## 22 **II. JURISDICTION AND VENUE**

23  
24 20. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C.  
25 § 1331 because it is a civil action arising under the laws of the United States, and pursuant to 29  
26 U.S.C. § 1332(e)(1), which provides for federal jurisdiction of actions brought under Title I of  
27 ERISA.



1           29. Plaintiff Patricia Gilchrist is a resident of Brentwood, California. She worked for  
2 AT&T Inc. or its predecessors from April 1979 to October 2012 and participates in the Non-  
3 Bargained Program of the Plan. In 2012, Plaintiff Gilchrist retired at age 55 and started receiving a  
4 50% joint and survivor annuity. Based on the information available to Plaintiffs, Plaintiff Gilchrist is  
5 harmed because Defendants applied a Joint and Survivor Annuity Factor to the calculation of her  
6 benefit, such that she is receiving less than the actuarial equivalent of the single life annuity option  
7 that was available to her when she retired at age 55.

8           30. Plaintiff Karen Fisher is a resident of Cheney, Kansas. She worked for AT&T, Inc. or  
9 its predecessors from 1982 to 2007, when she left the company at the age of 46. She is a fully vested  
10 participant in the Southwest Program of the Plan. Plaintiff Fisher is harmed because she is eligible to  
11 commence her pension today, but is unable to do so without being subject to the Joint and Survivor  
12 Annuity Factors, which would result in her receiving less than the actuarial equivalent of her single  
13 life annuity. Defendants disclosed inaccurate information to Plaintiff Fisher about the value of  
14 retirement benefits available to her under the Plan and ERISA, causing her to change her retirement  
15 plans to avoid being subject to draconian Reduction Factors.

16           31. Plaintiff Helen Maldonado-Valtierra is a resident of Irving, Texas. She worked for  
17 AT&T Inc. or its predecessors from 1993 to 2015 and participates in the Southwest Program of the  
18 Plan. In 2015, Plaintiff Maldonado-Valtierra retired at age 63 and started receiving a 50% joint and  
19 survivor annuity. Based on the information available to Plaintiffs, Plaintiff Maldonado-Valtierra is  
20 harmed because Defendants applied a Joint and Survivor Annuity Factor to the calculation of her  
21 benefit, such that she is receiving less than the actuarial equivalent of the single life annuity option  
22 available to her when she retired.

23           32. Plaintiff Dan Koval is a resident of Metuchen, New Jersey. He worked for AT&T Inc.  
24 or its predecessors for approximately 34 years and participates in the AT&T Legacy Management  
25 Program of the Plan. In 2015, Plaintiff Koval retired at age 55 and is currently receiving a joint and  
26 survivor annuity. Based on the information available to Plaintiffs, Plaintiff Koval is harmed because  
27 Defendants applied a Joint and Survivor Annuity Factor to the calculation of his benefit, such that he  
28

1 is receiving less than the actuarial equivalent of the single life annuity option available to him when  
2 he retired.

3 33. Plaintiff Judy D. Duff is a resident of Columbus, Georgia. She worked for AT&T Inc.  
4 or its predecessors and participates in the Mobility Program of the Plan. Plaintiff Duff has retired and  
5 receives a joint and survivor annuity. Based on the information available to Plaintiffs, Plaintiff Duff  
6 is harmed because Defendants applied a Joint and Survivor Annuity Factor to the calculation of her  
7 benefit, such that she is receiving less than the actuarial equivalent of the single life annuity option  
8 available to her when she retired.

9 34. Plaintiff John Griffin is a resident of Acworth, Georgia. He worked for AT&T Inc. or  
10 its predecessors and participates in the Southeast Management Program of the Plan. Plaintiff Griffin  
11 has retired and receives a joint and survivor annuity. Based on the information available to Plaintiffs,  
12 Plaintiff Griffin is harmed because Defendants applied a Joint and Survivor Annuity Factor to the  
13 calculation of his benefit, such that he is receiving less than the actuarial equivalent of the single life  
14 annuity option available to him when he retired.

15 35. Plaintiff Kenneth Rhodes is a resident of Deatsville, Alabama. He worked for AT&T  
16 Inc. or its predecessors and participates in the Southeast Program of the Plan. Plaintiff Rhodes has  
17 retired and receives a joint and survivor annuity. Based on the information available to Plaintiffs,  
18 Plaintiff Rhodes is harmed because Defendants applied a Joint and Survivor Annuity Factor to the  
19 calculation of his benefit, such that he is receiving less than the actuarial equivalent of the single life  
20 annuity option available to him when he retired.

21 36. Plaintiff Judy Dougherty is a resident of Chesterfield, Virginia. She worked for AT&T  
22 Inc. or its predecessors and participates in the AT&T Legacy Bargained Program of the Plan. Plaintiff  
23 Dougherty has retired and receives a joint and survivor annuity. Based on the information available to  
24 Plaintiffs, Plaintiff Dougherty is harmed because Defendants applied a Joint and Survivor Annuity  
25 Factor to the calculation of her benefit, such that she is receiving less than the actuarial equivalent of  
26 the single life annuity option available to her when she retired.

27 37. Plaintiff John Kelly is a resident of East Islip, NY. He worked for AT&T Inc. or its  
28 predecessors and participates in the AT&T Legacy Management Program. Plaintiff Kelly has retired

1 and receives a joint and survivor annuity. Based on the information available to Plaintiffs, Plaintiff  
2 Kelly is harmed because Defendants applied a Joint and Survivor Annuity Factor to the calculation of  
3 his benefit, such that he is receiving less than the actuarial equivalent of the single life annuity option  
4 available to him when he retired.

5 38. Plaintiff Richard Walshon is a resident of New Lenox, Illinois. He worked for AT&T,  
6 Inc. or its predecessors and participates in the Non-Bargained Program of the Plan. Plaintiff Walshon  
7 retired and receives a joint and survivor annuity. Based on the information available to Plaintiffs,  
8 Plaintiff Walshon is harmed because Defendants applied a Joint and Survivor Annuity Factor to the  
9 calculation of his benefit, such that he is receiving less than the actuarial equivalent of the single life  
10 annuity option that was available to him when he retired.

11 **Defendants**

12 39. **AT&T Inc.** is a media company comprised of multiple business units, including  
13 AT&T Communications which provides mobile, broadband and other communications services both  
14 domestically and abroad, and WarnerMedia, which produces entertainment, news, and sports media  
15 for film and television.

16 40. AT&T Inc. is the “plan sponsor” for the Plan within the meaning of § 3(16)(B), 29  
17 U.S.C. § 1002(16)(B).

18 41. AT&T Inc. makes contributions to the Plan to fund retirement benefits promised  
19 under the Plan.

20 42. **The AT&T Defined Benefit Plan (the “Plan”)** is a defined benefit plan within the  
21 meaning of ERISA § 3(35), 29 U.S.C. § 1002(35). The Plan is joined as a nominal defendant  
22 pursuant to Rule 19(a) of the Federal Rules of Civil Procedure solely to assure that complete relief  
23 can be granted.

24 43. **AT&T Services, Inc. (“AT&T Services”)** is a wholly-owned subsidiary of  
25 AT&T Inc., and is the Plan’s “administrator” within the meaning of ERISA § 3(16)(A), 29 U.S.C. §  
26 1002(16)(A). It is responsible for the general administration of the Plan.

1           44. Under the Plan Document<sup>2</sup>, AT&T Services is and was a “named fiduciary” of the  
2 Plan at all relevant times within the meaning of ERISA § 402(a), 29 U.S.C. § 1102(a). As such,  
3 AT&T Services has/had the authority to control and manage the operation and administration of the  
4 Plan.

5           45. Based on AT&T Services’ discretionary authority and/or discretionary responsibility  
6 for Plan administration set forth in the Plan Document, AT&T Services is also a Plan fiduciary  
7 within the meaning of § 3(21)(A)(iii), 29 U.S.C. § 1002(21)(A)(iii).

#### 8 9 **IV. LEGAL BACKGROUND**

##### 10 **A. Actuarial Equivalence**

11           46. Actuarial equivalence is a computation that is designed to ensure that, all else being  
12 equal, all forms of benefit payments have the same economic value as each other.

13           47. Generally, an actuarial equivalence computation considers the expected longevity of a  
14 participant and an interest rate which reflects the time value of money through a reasonable rate of  
15 return based on current market conditions.

16           48. To comply with ERISA, as well as to be considered a qualified plan under the Code, a  
17 plan must comply with specified valuation rules. *See* Treas. Reg. § 1.411(a)–11(a)(1).

18           49. ERISA provides that “in the case of any defined benefit plan, if an employee's  
19 accrued benefit is to be determined as an amount other than an annual benefit commencing at normal  
20 retirement age . . . the employee's accrued benefit . . . shall be the actuarial equivalent of such  
21 benefit[.]” § 204(c)(3), 29 U.S.C. § 1054(c)(3).

22           50. ERISA defines “normal retirement age” as age 65, or younger if provided by the  
23 pension plan. ERISA § 3(24), 29 U.S.C. § 1002(24); *see also* 26 U.S.C. § 411(a)(8); Treas. Reg. §  
24 1.411(a)–7(b).

25           51. This actuarial equivalence requirement set forth in ERISA § 204(c)(3), 29 U.S.C. §  
26 1054(c)(3), is repeated in the parallel Tax Code provision. 26 U.S.C. § 411(c)(3). The Treasury

27  
28 <sup>2</sup> Pursuant to ERISA § 402(a)(1), 29 U.S.C. § 1102(a)(1), the Plan is established and maintained according to a written instrument (the “Plan Document”).

1 regulations that construe 26 U.S.C. § 411(c)(3) likewise confirm the actuarial equivalence rule. 26  
2 C.F.R. § 1.411(c)-1(e) (referring to the “actuarial equivalence” of the participant’s accrued benefit in  
3 conformance with Treasury regulations).

4 52. In addition to the valuation rules referenced above, to comply with ERISA and to be  
5 considered a qualified trust under the Tax Code, a plan also must comply with certain actuarial  
6 equivalence rules. 26 CFR § 1.401(a)-11(a)(1).

7 53. The Treasury provides reasonable interest rates and mortality tables that are regularly  
8 updated. *See* 26 U.S.C. § 417(e)(3). These interest rates and mortality tables provide a reference  
9 point that ensures actuarial equivalence for present value calculations.

10 54. For a “qualified joint and survivor annuity,” ERISA § 205(a), 29 U.S.C. § 1055(a)  
11 requires that pension plans offer married participants the option of receiving a payment stream for  
12 their life and their spouse’s life after the retiree dies; this is a “joint and survivor annuity.” ERISA §  
13 205(a)-(d), 29 U.S.C. § 1055(a)-(d).

14 55. ERISA also provides that the joint and survivor annuity shall be “*the actuarial*  
15 *equivalent of a single annuity* for the life of the participant.” ERISA §§ 205(d)(1)(B), (d)(2)(ii), 29  
16 U.S.C. §§ 1055(d)(1)(B), 1055(d)(2)(ii) (emphasis added). This definition is repeated in the Tax  
17 Code provision of ERISA at 26 U.S.C. § 417(b)(2) (defining “Qualified Joint and Survivor Annuity”  
18 as “the actuarial equivalent of a single life annuity for the life of the participant.”) and § 417(g)(2)  
19 (defined “Qualified Optional Survivor Annuity” as “the actuarial equivalent of a single life annuity  
20 for the life of the participant.”).

21 56. Similarly, the Treasury regulations concerning joint and survivor annuities require  
22 that a “qualified joint and survivor annuity *must be at least the actuarial equivalent* of the normal  
23 form of life annuity or, if greater, of any optional form of life annuity offered under the plan.  
24 Equivalence may be determined, on the basis of *consistently applied reasonable* actuarial factors[.]”  
25 26 C.F.R. § 1.401(a)-11(b)(2) (emphasis added).

26 57. Treasury regulations explain this means “in the case of a married participant, the  
27 QJSA must be *at least as valuable as any other optional form of benefit payable under the plan at*  
28 *the same time.*” 26 C.F.R. § 1.401(a)-20 Q&A-16 (emphasis added)



1           66. To the best of Plaintiffs' knowledge based on the available information, tens of  
2 thousands of Plan participants live in California, including in this District, and receive benefits  
3 through the Plan.

4           67. Under the Plan, a participant's normal retirement benefit is expressed as a series of  
5 monthly benefit payments beginning at "normal retirement age," and continuing until a participant's  
6 death. No payments are made after the participant's death. An annuity commencing at retirement and  
7 ceasing at the retiree's death is called a "single life annuity."

8           68. The default form of payment for unmarried participants is a single life annuity.

9           69. The Plan defines "Actuarial Equivalence" as "equality in value of the aggregate  
10 amounts expected to be received under different times and forms of payment using the Applicable  
11 Interest Rate and Applicable Mortality Table."

12           70. Though the Plan Document purports to comply with ERISA and all other applicable  
13 law and to calculate actuarial equivalent benefits for certain participants by using the "applicable  
14 interest rate" and the "applicable mortality table" specified in 26 U.S.C. § 417(e)(3), the Plan does  
15 not in fact pay to Class members the "actuarial equivalent" for Joint and Survivor Annuities.

16           71. Rather, it determines retirement benefits for Class members by applying the Joint and  
17 Survivor Annuity Factors contained in the Plan Document, which result in participants receiving less  
18 than the actuarial equivalent of their vested accrued benefit, in violation of ERISA. This constitutes  
19 equitable fraud or inequitable conduct.

20           72. AT&T Services, as the Plan's Named Fiduciary and Plan Administrator was  
21 responsible for calculating and paying benefits in accordance with ERISA's requirements and the  
22 Plan's terms, unless those Plan terms themselves violated ERISA, in which case ERISA's fiduciary  
23 duties required AT&T Services to act in accordance with ERISA rather than the Plan. *See* 29 U.S.C.  
24 1104(a)(1)(D). AT&T Services acted imprudently and disloyally because it calculated retirement  
25 benefits using the Joint and Survivor Annuity Factors, which resulted in Class members receiving  
26 less than the actuarial equivalent of their vested accrued benefit. This allowed AT&T Services'  
27 corporate parent, AT&T, Inc., to save money by reducing the amount of money AT&T Inc., the Plan  
28 sponsor, had to contribute to the Plan to fund benefits.

73. AT&T Services' utilization of the Joint and Survivor Annuity Factors to calculate retirement benefits for the Plan also allowed its corporate parent, AT&T Inc., to report in its SEC-mandated disclosure to shareholders a smaller pension benefit obligation, which improperly reduced AT&T, Inc.'s disclosed corporate liabilities and misrepresented AT&T's true financial picture.

**B. Joint and Survivor Annuity Benefits Under the Plan**

74. For the Class, the Reduction Factors used by AT&T Services to determine Joint and Survivor Annuities result in payment of a benefit that is less than the actuarial equivalent of the Single Life Annuity at retirement, as set forth below:

<b>Table 1. Reduction Factors Used by Plan for Joint and Survivor Annuities ("J&amp;SA")</b>			
<b>Program</b>	<b>Reduction Factors</b>		
	<b>50% J&amp;SA</b>	<b>75% J&amp;SA</b>	<b>100% J&amp;SA</b>
AT&T Legacy Bargained Program	0.88	0.82	N/A
AT&T Legacy Management Program	0.88	0.82	N/A
Bargained Cash Balance Program	0.90	0.85	N/A
Bargained Cash Balance Program #2	0.90	0.85	N/A
DIRECTV Program <sup>3</sup>	0.84	0.77	0.72
East Program	0.90	0.85	N/A
Management Cash Balance Program	0.90	0.85	N/A
Midwest Program	0.85	0.83	.80
Mobility Bargained Program <sup>4</sup>	0.90	0.85	0.81
Mobility Program <sup>5</sup>	0.90	0.85	N/A

<sup>3</sup> Whereas most component programs utilize a pre-set, one-size-fits-all Reduction Factor to make J&SA conversions, the DIRECTV program uses a highly outdated mortality table from 1971 to generate a different conversion factor depending on the retiree's age and the age of the retiree's spouse. The Reduction Factors reflected here are what the outdated 1971 table generates for an individual at normal retirement age with a spouse the same age.

<sup>4</sup> Like the DIRECTV program, the Mobility Bargained Program does not necessarily use a one-size-fits-all Reduction Factor. With the exception of certain individuals who were participants before 2006, these programs instead use a mortality table that is many decades out of date. The Reduction Factors reflected here are what that outdated table generates for an individual at normal retirement age with a spouse the same age.

<sup>5</sup> Like the DIRECTV program, the Mobility Program does not necessarily use a one-size-fits-all Reduction Factor. With the exception of certain individuals who were participants before 2006, these programs instead use a mortality table that is many decades out of date. The Reduction Factors reflected here are what that outdated table generates for an individual at normal retirement age with a spouse the same age.

1	Non-bargained Program	0.90	0.85	0.80
2	Southeast Management Program	0.85	0.78	N/A
3	Southeast Program	0.85	0.78	N/A
4	Southwest Program	0.90	0.85	0.80
5	West Program	0.90	0.85	0.80
6	<b>ERISA Compliant Factors Calculated Based on 26 U.S.C. § 417(e) Assumptions<sup>6</sup></b>	<b>0.92</b>	<b>0.89</b>	<b>0.86</b>

75. Thus, for example, if a participant in the Southeast Program has a single life annuity benefit of \$1,000 per month starting at age 65, and she retired at age 65 taking a 50% Joint and Survivor Annuity, under the Plan's rules her monthly pension payments would each be \$850 (0.85 x \$1000). And, if her spouse (who is the same age as the participant) survived her, the spouse would receive monthly payments of \$425 (50% x \$850). If she had been paid the actuarial equivalent of her benefits, she would have received \$920 (0.92 x \$1000) per month during her lifetime and her surviving spouse would have received \$460 (50% x \$920) per month if the spouse survives her. Thus, she is underpaid about \$70 per month for her life and her surviving spouse is underpaid \$35 per month for his or her life.

76. If, instead, the same Southeast Program participant elected a 75% Joint and Survivor Annuity, under the Plan's rules her monthly pension payments would each be \$780 (0.78 x \$1,000). And, if her spouse (who is the same age as the participant) survived her, the spouse would receive monthly payments of \$585 (75% x \$780). If she had been paid the actuarial equivalent of her benefits, she would have received monthly payments of \$890 (0.89 x \$1,000), for her lifetime, and if her spouse survived her, the spouse would receive \$667.50 (75% x \$890) per month until the spouse's death. Thus, the participant is underpaid \$110 per month for her life and her surviving spouse is underpaid \$82.50 per month for the spouse's life.

77. The calculation of a Joint and Survivor Annuity when using a reasonable interest rate and reasonable mortality table (e.g., those prescribed by 26 U.S.C. § 417(e)), is substantially more favorable for participants than use of the Plan's Joint and Survivor Reduction Factors, as shown in Table 1 above.

<sup>6</sup> These figures are based on a participant who retires at age 65 and whose spouse is the same age as the participant. The Joint and Survivor Annuity Reduction Factors grow further from actuarial equivalence the younger the retiree's age and/or the older the spouse's relative age.

1           78.     The percentage of benefits forfeited because of the ERISA non-compliant Reduction  
2 Factors applied to Joint and Survivor Annuity under the Plan’s terms exceed 14% in certain  
3 circumstances.

4           79.     With limited exceptions, the Plan does not disclose the assumptions that form the  
5 basis of the Joint and Survivor Annuity Reduction Factors. To the best of Plaintiffs’ knowledge  
6 based on the available information, these factors have not been updated in over a decade, despite  
7 dramatic increases in longevity amongst the American public.

8           80.     The increases in longevity of the American public are reflected in the longevity  
9 increases in the mortality tables provided for by 29 U.S.C. § 1055(g), which are updated routinely by  
10 the Treasury Department.

11           81.     Nonetheless, the Plan uses Joint and Survivor Annuity Reduction Factors that are  
12 outdated, unreasonable, less than the actuarial equivalent value of a participant’s single life annuity  
13 benefit, and thus result in the illegal forfeiture of vested benefits under ERISA.

14           82.     The Joint and Survivor Annuity Reduction Factors also diverge from the actuarial  
15 assumptions used to calculate other forms of benefits, such as deferred lump sum payments. As such,  
16 Plan fails to use “consistently applied reasonable actuarial factors” in conformance with 26 C.F.R.  
17 § 1.401(a)-11(b)(2).

18           83.     In fact, the Plan generally does not attempt to determine “actuarial equivalence” for  
19 Joint and Survivor Annuities, and instead calculates those benefits using the excessive Reduction  
20 Factors set forth in Table 1 above. And where it does purport to determine “actuarial equivalence,” it  
21 uses mortality assumptions up to fifty years out of date.

22           84.     Thus, while the Plan acknowledges the actuarial equivalence requirement of ERISA,  
23 it fails to utilize an actuarial equivalence calculation for Joint and Survivor Annuities.

24           85.     It is unreasonable for the Plan Administrator to fail to provide actuarially equivalent  
25 benefits to all participants in the Plan.

26           86.     Because ERISA requires that plan fiduciaries treat all plan participants equally and  
27 equitably, AT&T Services as the Plan Administrator must act loyally and prudently to ensure that all  
28 participants are receiving the actuarial equivalence of their accrued vested benefits. The Joint and

1 Survivor Annuity Reduction Factors that AT&T Services used to calculate these benefits penalize  
2 participants for being married, compared to those who are single at retirement.

3 87. The Plan's failure to provide actuarially equivalent Joint and Survivor Annuity  
4 Reduction Factors harms participants taking these benefits, causing them to lose, in the aggregate,  
5 tens of millions of dollars in benefits.

6 88. Moreover, AT&T Services failed to disclose to participants that they would receive  
7 less than the actuarial equivalent value of their benefit if they received a Joint and Survivor Annuity.

### 8 **C. Other Actuarial Assumptions by the Plan**

9 89. For purposes of minimum funding, ERISA requires that "the determination of  
10 any present value or other computation under this section shall be made on the basis of actuarial  
11 assumptions and methods—(A) each of which is reasonable (taking into account the experience of  
12 the plan and reasonable expectations), and (B) which, in combination, offer the actuary's best  
13 estimate of anticipated experience under the plan." ERISA § 303(h), 29 U.S.C. § 1083(h).

14 90. Here, the Plan's minimum funding requirements are determined using rates of  
15 mortality based on RP-2014 Combined Healthy Mortality Table with projection Scale MP-2018 and  
16 an interest rate of 6.5%, for Plan Year 2018.

17 91. In AT&T Inc.'s Annual Reports, it discloses to shareholders the value of the Plan's  
18 pension obligations, which is calculated using updated interest rate and mortality assumptions that  
19 reflect current experience. For its Annual Reports, AT&T Inc. determines the interest rates using  
20 current yield curves for several hundred high-quality, fixed income corporate bonds, and updates "its  
21 assumed mortality rates to reflect [its] best estimate of future mortality tables on an annual basis to  
22 reflect current longevity rates."

23 92. To the best of Plaintiffs' knowledge based on the available information, the actuarial  
24 assumptions the Plan uses for ERISA's minimum funding requirements and for disclosures in the  
25 Annual Reports to AT&T shareholders both assume greater longevity and a higher rate of return  
26 than do the assumptions underpinning the Joint and Survivor Annuity Reduction Factors. The Plan  
27 therefore used different assumptions, regarding the same variables, to calculate ERISA funding  
28

1 requirements and for shareholder disclosures (using *updated* assumptions), from those it used to  
2 calculate benefit reductions for Joint and Survivor Annuities (using *outdated* assumptions).

3 93. Thus, the Plan does not use “reasonable” actuarial assumptions based on “the  
4 experience of the plan and reasonable expectations” and which “offer the actuary’s best estimate of  
5 anticipated experience under the plan” when calculating Plan participants’ joint and survivor  
6 annuities, resulting in a reduction of benefits that is not permitted by ERISA.

7 **D. AT&T Failed to Disclose, and Otherwise Misrepresented, the Amount of Participants’**  
8 **ERISA-Protected Benefits. This Limits AT&T’s Funding Obligations and Reduces AT&T’s**  
9 **Expenses.**

10 94. ERISA requires that a fiduciary provide accurate information to participants so that  
11 they can make informed decisions about their retirement benefit choices. *Washington v. Bert Bell/Pete*  
12 *Rozelle NFL Ret. Plan*, 504 F.3d 818, 823-24 (9th Cir. 2007); *Krohn v. Huron Mem’l Hosp.*, 173 F.3d  
13 542, 547-58 (6th Cir. 1999).

14 95. AT&T has admitted that ERISA requires that Defendants provide complete and  
15 accurate information to the Plan participants about their benefit calculations.

16 96. When deciding if and when to retire, and what form of benefit to elect, Plaintiffs and  
17 the Class rely and relied upon the accuracy of information provided to them by Defendants to plan  
18 for retirement.

19 97. Defendants provide information to participants detailing the amount of retirement  
20 benefits AT&T will pay them under various forms of retirement benefit.

21 98. The information Defendants disclosed and continue to disclose to Plan participants  
22 concerning the optional forms of benefits incorporate the illegal Reduction Factors discussed above,  
23 preventing Plaintiffs and other Plan participants from adequately assessing what form of benefit to  
24 elect and how best to plan for their retirements.

25 99. Defendants do not disclose all the assumptions underlying the Reduction Factors to  
26 Plaintiffs and other participants.

27 100. Further, Defendants do not disclose to Plaintiffs and other participants the amount of  
28 pension benefit they would receive if Defendants utilized actuarially equivalent assumptions.



1 **B. Commonality**

2 106. There are questions of law and fact common to the Class and these questions  
3 predominate over questions affecting only individual Class members. Common legal and factual  
4 questions include, but are not limited to:

- 5
- 6 A. Whether the Joint and Survivor Annuity Factors applicable to the Class violate the  
actuarial equivalence requirements of ERISA?
  - 7 B. Whether the Joint and Survivor Annuity Factors applicable to the Class cause Plan  
8 participants in the Class to illegally forfeit their vested benefits?
  - 9 C. Whether AT&T Services violated its ERISA fiduciary duties of loyalty, prudence, and  
to follow the Plan Document *only if* its terms are consistent with ERISA?
  - 10 D. Whether AT&T Services should be enjoined from using the Plan's Joint and Survivor  
11 Annuity Factors and required to calculate benefits based on reasonable actuarial  
equivalence calculations which are consistent with the Plan's other actuarial  
12 equivalence determinations?
  - 13 E. Whether the Plan should be reformed to eliminate any Joint and Survivor Annuity  
Factors which reduce pension benefits paid or payable to Plan participants below the  
14 actuarial equivalent value of those benefits?
  - 15 F. Whether Plaintiffs and members of the Class should be paid additional benefits under  
16 the Plan as reformed to provide them the difference between the benefit the Plan  
previously determined to be their reduced benefit and the actuarially equivalent value  
of their benefit?

17 **C. Typicality**

18 107. Plaintiffs' claims are typical of the claims of the members of the Class because they  
19 arise out of the same policies and practices as alleged herein, and all members of the Class are  
20 affected by Defendants' wrongful conduct.

21 **D. Adequacy**

22 108. Plaintiffs will fairly and adequately represent the Class and they have retained  
23 counsel experienced and competent in the prosecution of ERISA class actions. Plaintiffs have no  
24 interests antagonistic to those of other members of the Class. Plaintiffs are committed to the vigorous  
25 prosecution of this action and anticipate no difficulty in the management of this litigation as a class  
26 action.

1 **E. Rule 23(b)(1) Requirements**

2 109. The requirements of Rule 23(b)(1)(A) are satisfied because prosecution of separate  
3 actions by the members of the Class would create a risk of establishing incompatible standards of  
4 conduct for Defendants

5 110. The requirements of Rule 23(b)(1)(B) are satisfied because adjudications of these  
6 claims by individual members of the Class would, as a practical matter, be dispositive of the interests  
7 of the other members not parties to the actions, or substantially impair or impede the ability of other  
8 members of the Class to protect their interests.

9 **F. Rule 23(b)(2) Requirements**

10 111. Class action status is also warranted under Rule 23(b)(2) because AT&T Services and  
11 AT&T, Inc. have acted vis-à-vis the Plan as a whole, which should result in appropriate final  
12 injunctive, declaratory, or other appropriate equitable relief with respect to the Class as a whole.

13 112. Individual Class members do not have an interest in controlling the prosecution of  
14 these claims in individual actions rather than a class action because the equitable relief sought by any  
15 Class member will either inure to the benefit of the Plan or affect each Class member equally.

16 **G. Rule 23(b)(3) Requirements**

17 113. If the Class is not certified under Rule 23(b)(1) or (b)(2), then certification under  
18 (b)(3) is appropriate because questions of law or fact common to members of the Class predominate  
19 over any questions affecting only individual members. The common issues of law or fact that  
20 predominate over any questions affecting only individual members include: those listed above in  
21 Section VI.B.

22 114. There are no difficulties in managing this case as a class action.

23  
24 **VII. CAUSES OF ACTION**

25 **COUNT I: VIOLATION OF THE ACTUARIAL EQUIVALENCE REQUIREMENT AT**  
26 **ERISA § 204(C)(3), 29 U.S.C § 1054(C)(3)**  
**(AGAINST AT&T SERVICES AND AT&T INC.)**

27 115. Plaintiffs re-allege and incorporate herein by reference all prior allegations in this  
28 Complaint.

1           116. ERISA § 204(c)(3), 29 U.S.C. § 1054(c)(3) requires “if an employee’s accrued  
2 benefit is to be determined as an amount other than an annual benefit commencing at normal  
3 retirement age [here 65] . . . the employee’s accrued benefit . . . shall be the actuarial equivalent of  
4 such benefit[.]”

5           117. Thus, under § 204(c)(3), 29 U.S.C. § 1054(c)(3), if a participant takes her benefit as a  
6 Joint and Survivor Annuity, and the Plan reduces the participant’s benefit, the reduced benefit must  
7 be the actuarial equivalent of that benefit expressed as a single life annuity benefit starting at age  
8 65.<sup>7</sup>

9           118. Relevant here, the Plan sets forth Reduction Factors used to determine the value of  
10 Joint and Survivor Annuities.

11           119. The Plan defines “Actuarial Equivalence” as “equality in value of the aggregate  
12 amounts expected to be received under different times and forms of payment using the Applicable  
13 Interest Rate and Applicable Mortality Table.” Yet the Plan does not calculate Joint and Survivor  
14 Annuities using reasonable assumptions for actuarial equivalence. Rather, it uses preset Reduction  
15 Factors, which result in payment of less than the actuarial equivalent of the participant’s vested  
16 accrued benefit. This violates ERISA § 204(c)(3), 29 U.S.C. § 1054(c)(3).

17           120. AT&T Services, as a Named Fiduciary and the Plan Administrator, was and is  
18 responsible for paying all Plan participants the full value of their vested retirement benefits upon  
19 retirement. But AT&T Services instead calculates benefits using outdated, unreasonable, and non-  
20 actuarially equivalent Reduction Factors for Joint and Survivor Annuities. As such, AT&T Services  
21 violates ERISA § 204(c)(3), 29 U.S.C. § 1054(c)(3) by impermissibly paying Plan participants less  
22 than the actuarial equivalent of their ERISA-protected retirement benefits.  
23

24  
25 <sup>7</sup> Separately, ERISA § 205, 29 U.S.C. § 1055, requires that, at the time a participant retires, if she  
26 takes her benefit as a Joint and Survivor Annuity, the value of the Joint Annuity must be no less the  
27 actuarial equivalent of the Single Life Annuity payable at retirement, even if the participant retires  
28 early. *See* Count III, *infra*. Thus, Count III provides an independent claim from Count I, which is  
based on a comparison of the value of a participant’s annuity on the date the participant retires to her  
annuity at normal retirement age, even if she retires early.

1           121. AT&T Inc., as the Plan Sponsor, was and is responsible for maintaining Plan terms  
2 that are consistent with ERISA. To the best of Plaintiffs' knowledge based on the available  
3 information, for over a decade AT&T Inc. failed to update the Reduction Factors for Joint and  
4 Survivor Annuities to conform with ERISA's actuarial equivalence requirement. As such, AT&T  
5 Inc. violates ERISA § 204(c)(3), 29 U.S.C. § 1054(c)(3).

6           122. ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3), authorizes a participant or beneficiary to  
7 bring a civil action to "(A) enjoin any act or practice which violates any provision of this title or the  
8 terms of the plan, or (B) to obtain other appropriate equitable relief (i) to redress such violations or  
9 (ii) to enforce any provisions of this title or the terms of the plan."

10           123. Pursuant to § 502(a)(3), 29 U.S.C. § 1132(a)(3), Plaintiffs seek all available and  
11 appropriate equitable relief against AT&T Services and AT&T Inc. to redress the violations of  
12 ERISA § 204(c)(3), 29 U.S.C. § 1054(c)(3) described herein, including, but not limited to the relief  
13 set forth below in the Prayer For Relief.

14           124. ERISA § 502(a)(2), 29 U.S.C. § 1132(a)(2), authorizes a participant or beneficiary to  
15 bring a civil action "for appropriate relief under section 1109 of this title."

16           125. ERISA § 409(a), 29 U.S.C. § 1109(a), mandates that "[a]ny person who is a fiduciary  
17 with respect to a plan who breaches any of the responsibilities, obligations, or duties imposed upon  
18 fiduciaries by this subchapter shall be personally liable to make good to such plan any losses to the  
19 plan resulting from each such breach, and to restore to such plan any profits of such fiduciary which  
20 have been made through use of assets of the plan by the fiduciary, and shall be subject to such other  
21 equitable or remedial relief as the court may deem appropriate, including removal of such fiduciary."

22           126. Pursuant to ERISA § 502(a)(2) and § 409(a), 29 U.S.C. § 1132(a)(2) and §1109(a),  
23 Plaintiffs seek all available and appropriate remedies against AT&T Services to redress violations of  
24 ERISA § 204(c)(3), 29 U.S.C. § 1054(c)(3) described herein, including, but not limited to the relief  
25 set forth below in the Prayer For Relief.

**COUNT II: VIOLATION OF THE ANTI-FORFEITURE RULES AT  
ERISA § 203(A), 29 U.S.C. § 1053(A)  
(AGAINST AT&T SERVICES AND AT&T INC.)**

1  
2  
3 127. Plaintiffs re-allege and incorporate herein by reference all prior allegations in this  
4 Complaint.

5 128. ERISA § 203(a) of ERISA, 29 U.S.C. § 1053(a), sets forth ERISA's  
6 "Nonforfeitability requirements," which provide that "an employee's right to his normal retirement  
7 benefit is non-forfeitable[.]" The Treasury regulation, 26 C.F.R. § 1.401(a)-14(c), which "defines the  
8 term 'nonforfeitable' for purposes of these [non-forfeitable] requirements" state that "adjustments  
9 in excess of reasonable actuarial reductions, can result in rights being forfeitable."

10 129. Thus, paying a participant less than the actuarial equivalent of her accrued vested  
11 benefit results in an illegal forfeiture of her vested benefits. ERISA § 203(a), 29 U.S.C. § 1053(a).

12 130. As explained above, Class members received less than the actuarial equivalent of  
13 their benefits (expressed as single life annuities) because the Plan's Reduction Factors for Joint and  
14 Survivor Annuities provided them with less than the actuarial equivalent of their ERISA-protected  
15 benefits.<sup>8</sup>

16 131. AT&T Services, as the Plan Administrator, was and is responsible for paying all Plan  
17 participants the full value of their non-forfeitable vested benefits. But AT&T Services instead  
18 calculated benefits using outdated and non-actuarially equivalent Reduction Factors for Joint and  
19 Survivor Annuities As such, AT&T Services caused and causes Plan participants to forfeit their  
20 ERISA-protected benefits. Therefore, AT&T Services, violates ERISA § 203(a), 29 U.S.C. §  
21 1053(a).

22 132. AT&T Inc., as the Plan Sponsor, was and is responsible for maintaining Plan terms  
23 that are consistent with ERISA. To the best of Plaintiffs' knowledge based on the available  
24 information, for over a decade AT&T Inc. failed to update the Reduction Factors for Joint and

25  
26 <sup>8</sup> Separately, ERISA § 205, 29 U.S.C. § 1055, requires that, at the time a participant retires, if she  
27 takes her benefit as a Joint and Survivor Annuity, the value of the Joint Annuity must be no less the  
28 actuarial equivalent of a Single Life Annuity payable on that date of retirement, even if the  
participant retires early. *See* Count III, *infra*. Thus, Count III provides an independent claim from  
Count II, which is based on a comparison of the value of a participant's annuity on the date the  
participant retires to her annuity at normal retirement age, even if she retires early.

1 Survivor Annuities to ensure that they provided participants with the actuarial equivalent of their  
2 vested retirement benefits. As such, AT&T Inc. violates ERISA § 203(a), 29 U.S.C. § 1053(a), by  
3 maintaining Plan terms that result in an illegal forfeiture of benefits.

4 133. ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3), authorizes a participant or beneficiary to  
5 bring a civil action to “(A) enjoin any act or practice which violates any provision of this title or the  
6 terms of the plan, or (B) to obtain other appropriate equitable relief (i) to redress such violations or  
7 (ii) to enforce any provisions of this title or the terms of the plan.”

8 134. Pursuant to § 502(a)(3), 29 U.S.C. § 1132(a)(3), Plaintiffs seek all available and  
9 appropriate equitable relief against AT&T Services and AT&T Inc. to redress the violations of  
10 ERISA § 203(a), 29 U.S.C. § 1054(a) described herein, including, but not limited to the relief set  
11 forth below in the Prayer For Relief.

12 135. ERISA § 502(a)(2), 29 U.S.C. § 1132(a)(2), authorizes a participant or beneficiary to  
13 bring a civil action “for appropriate relief under section 1109 of this title.”

14 136. ERISA § 409(a), 29 U.S.C. § 1109(a), mandates that “[a]ny person who is a fiduciary  
15 with respect to a plan who breaches any of the responsibilities, obligations, or duties imposed upon  
16 fiduciaries by this subchapter shall be personally liable to make good to such plan any losses to the  
17 plan resulting from each such breach, and to restore to such plan any profits of such fiduciary which  
18 have been made through use of assets of the plan by the fiduciary, and shall be subject to such other  
19 equitable or remedial relief as the court may deem appropriate, including removal of such fiduciary.”

20 137. Pursuant to ERISA § 502(a)(2) and § 409(a), 29 U.S.C. § 1132(a)(2) and §1109(a),  
21 Plaintiffs seek all available and appropriate remedies against AT&T Services to redress violations of  
22 ERISA § 203(a), 29 U.S.C. § 1054(a) described herein, including, but not limited to the relief set  
23 forth below in the Prayer For Relief.

24  
25 **COUNT III: VIOLATION OF THE QUALIFIED JOINT AND SURVIVOR ANNUITY**  
26 **REQUIREMENT AT ERISA § 205, 29 U.S.C. § 1055**  
**(AGAINST AT&T SERVICES AND AT&T INC.)**

27 138. Plaintiffs re-allege and incorporate herein by reference all prior allegations in this  
28 Complaint.

1           139. ERISA § 205(a)-(d), 29 U.S.C. § 1055(a)-(d) requires that all plans shall provide  
2 benefits in the form of a “Qualified Joint and Survivor Annuity” and “Qualified Optional Survivor  
3 Annuity” and ERISA § 205(d), 29 U.S.C. § 1055(d) provides that they must be “the actuarial  
4 equivalent of a single annuity for the life of the participant.”

5           140. Treasury regulations setting forth plan requirements provide that a “qualified joint  
6 and survivor annuity must be at least the actuarial equivalent of the normal form of life annuity or, if  
7 greater, of any optional form of life annuity offered under the plan...determined, on the basis of  
8 consistently applied reasonable actuarial factors[.]” 26 C.F.R. § 1.401(a)-11(b)(2).

9           141. In other words, ERISA § 205(a)-(d) requires that at the time a participant retires, if  
10 she takes her benefit as a Joint and Survivor Annuity, the value of the Joint Annuity must be no less  
11 the actuarial equivalent of the Single Life Annuity payable on her retirement date, even if the  
12 participant retires early.

13           142. As explained above, the Plan’s Reduction Factors for Joint and Survivor Annuities  
14 reduce a participant’s benefits to less than the actuarial equivalent value of their ERISA protected  
15 benefits expressed as the Single Life Annuity at the same retirement date, and they are based on  
16 different actuarial assumptions than the Plan uses for determining its funded status and for  
17 calculating other forms of benefits.

18           143. Class members whose benefits are calculated using the Plan’s Reduction Factors for  
19 Joint and Survivor Annuities receive less than actuarial equivalent value of their retirement benefits  
20 expressed as single life annuity at the same retirement date because the factors are unreasonable and  
21 inconsistent with the actuarial assumptions the Plan uses for determining its funded status and for  
22 calculating other forms of benefits.

23           144. As such, the Plan’s Reduction Factors for Joint and Survivor Annuities, set forth in  
24 Table 1 above, violate ERISA § 205(a)-(d), 29 U.S.C. § 1055(a)-(d).

25           145. AT&T Services, as the Plan Administrator, was and is responsible for paying all Plan  
26 participants the full value of their ERISA protected benefits. Instead, AT&T Services determined  
27 benefits using outdated and non-actuarially equivalent Reduction Factors for Joint and Survivor  
28 Annuities, which use different actuarial assumptions than are used for deferred lump sum payments

1 or for funding calculations. As such, AT&T Services does not pay participants actuarially equivalent  
2 Joint and Survivor Annuities as required by ERISA. Therefore, AT&T Services violated ERISA §  
3 205(a)-(d), 29 U.S.C. § 1055(a)-(d).

4 146. ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3), authorizes a participant or beneficiary to  
5 bring a civil action to “(A) enjoin any act or practice which violates any provision of this title or the  
6 terms of the plan, or (B) to obtain other appropriate equitable relief (i) to redress such violations or  
7 (ii) to enforce any provisions of this title or the terms of the plan.”

8 147. Pursuant to § 502(a)(3), 29 U.S.C. § 1132(a)(3), Plaintiffs seek all available and  
9 appropriate equitable relief against AT&T Services and AT&T Inc. to redress the violations of  
10 ERISA § 205, 29 U.S.C. § 1055 described herein, including, but not limited to the relief set forth  
11 below in the Prayer For Relief.

12 148. ERISA § 502(a)(2), 29 U.S.C. § 1132(a)(2), authorizes a participant or beneficiary to  
13 bring a civil action “for appropriate relief under section 1109 of this title.”

14 149. ERISA § 409(a), 29 U.S.C. § 1109(a), mandates that “[a]ny person who is a fiduciary  
15 with respect to a plan who breaches any of the responsibilities, obligations, or duties imposed upon  
16 fiduciaries by this subchapter shall be personally liable to make good to such plan any losses to the  
17 plan resulting from each such breach, and to restore to such plan any profits of such fiduciary which  
18 have been made through use of assets of the plan by the fiduciary, and shall be subject to such other  
19 equitable or remedial relief as the court may deem appropriate, including removal of such fiduciary.”

20 150. Pursuant to ERISA § 502(a)(2) and § 409(a), 29 U.S.C. § 1132(a)(2) and §1109(a),  
21 Plaintiffs seek all available and appropriate remedies against AT&T Services to redress violations of  
22 ERISA § § 205, 29 U.S.C. § 1055 described herein, including, but not limited to the relief set forth  
23 below in the Prayer For Relief.

24 **COUNT IV: BREACHES OF FIDUCIARY DUTY**  
25 **(AGAINST AT&T SERVICES)**

26 151. Plaintiffs re-allege and incorporate herein by reference all prior allegations in this  
27 Complaint.

1           152. During all relevant times, AT&T Services was a Named Fiduciary of the Plan and  
2 was responsible for paying benefits in accordance with ERISA’s requirements and the Plan’s terms,  
3 unless those Plan terms themselves violated ERISA.

4           153. ERISA § 404(a)(1)(A), 29 U.S.C. § 1104(a)(1)(A), requires AT&T Services, as the  
5 Plan Administrator charged with paying benefits consistently with ERISA’s requirements, to act  
6 loyally in the best interest of all Plan participants, including the Class members. This duty further  
7 requires AT&T Services to communicate with Plaintiffs and other Plan participants honestly and  
8 accurately.

9           154. ERISA § 404(a)(1)(B), 29 U.S.C. § 1104(a)(1)(B), requires that a AT&T Services, as  
10 the Plan Administrator charged with paying benefits consistently with ERISA’s requirements, act  
11 prudently when determining benefits owed to Plan participants, which includes ensuring that all  
12 benefits paid pursuant to the Plan conformed with ERISA’s statutory requirements and Treasury  
13 regulations.

14           155. ERISA § 404(a)(1)(D), 29 U.S.C. § 1104(a)(1)(D), requires that a fiduciary with  
15 respect to a plan shall discharge their duties “solely in the interest of participants and beneficiaries  
16 and . . . in accordance with the documents and instruments governing the plan” insofar as such  
17 documents are “consistent with” subchapters I and III of ERISA.

18           156. AT&T Services breached these fiduciary duties by, *inter alia*:

19           A. Disloyally reducing Class members’ pension benefits through application of Joint and  
20 Survivor Annuity Factors in violation of 29 U.S.C. § 1104(a)(1)(A), which: (i)  
21 resulted in Class members receiving less than the actuarial equivalent of their vested  
22 accrued benefit and; (ii) enabled AT&T Inc. as Plan Sponsor, to save money by  
23 reducing the amount it had to contribute to the Plan to fund benefits and ultimately  
24 pay to Plan participants;

25           B. Disloyally reducing Class members’ pension benefits through application of the Joint  
26 and Survivor Annuity Factors in violation of 29 U.S.C. § 1104(a)(1)(A), which  
27 resulted in Class members receiving less than the actuarial equivalent of their vested  
28 accrued benefit and enabled AT&T Inc. as Plan Sponsor to report in its SEC-  
mandated disclosure to shareholders a smaller pension benefit obligation. This  
improperly reduced AT&T Inc.’s disclosed corporate liabilities and misrepresented  
AT&T’s true financial picture;

- 1 C. Disloyally providing inaccurate and misleading information to Class members by  
2 misrepresenting that the JSAs paid by the Plan were QJSAs and calculated using  
3 reasonable actuarial assumptions (when in fact the JSAs were less valuable than  
4 QJSAs based on reasonable actuarial assumptions) and by failing to tell Plan  
5 participants that the JSAs—which are the default option for married participants—are  
6 worth less than the SLAs available at retirement;
- 7 D. Failing to act prudently when determining benefits owed to Plan participants by, *inter*  
8 *alia*, ensuring that all benefits paid are/were in conformed with ERISA’s  
9 requirements set forth in 29 U.S.C. §§ 203, 204, and 205, which caused Class  
10 members to receive less than the full value of their ERISA-protected accrued benefit  
11 and violated AT&T Services duty of prudence set forth at 29 U.S.C. § 1104(a)(1)(B);
- 12 E. Following Plan terms which violate ERISA (specifically 29 U.S.C. §§ 203, 204, and  
13 205) which constitutes a fiduciary breach, 29 U.S.C. § 1104(a)(1)(D), and results in  
14 participants receiving less than the actuarial equivalent of their vested accrued benefit  
15 and result in participants forfeiting a portion of their vested accrued benefit;

16 157. As a direct and proximate result of these fiduciary breaches, Plaintiffs and Class  
17 members lost tens of millions of dollars in vested accrued pension benefits.

18 158. ERISA § 502(a)(2), 29 U.S.C. § 1132(a)(2), authorizes a participant or beneficiary to  
19 bring a civil action “for appropriate relief under section 1109 of this title.”

20 159. ERISA § 409(a), 29 U.S.C. § 1109(a), mandates that “[a]ny person who is a fiduciary  
21 with respect to a plan who breaches any of the responsibilities, obligations, or duties imposed upon  
22 fiduciaries by this subchapter shall be personally liable to make good to such plan any losses to the  
23 plan resulting from each such breach, and to restore to such plan any profits of such fiduciary which  
24 have been made through use of assets of the plan by the fiduciary, and shall be subject to such other  
25 equitable or remedial relief as the court may deem appropriate, including removal of such fiduciary.”

26 160. Pursuant to ERISA § 502(a)(2) and § 409(a), 29 U.S.C. § 1132(a)(2) and § 1109(a),  
27 Plaintiffs, on behalf of the Plan, seek all available and appropriate remedies against AT&T Services  
28 to redress and make good to the Plan all losses caused by its violations of ERISA § 404, 29 U.S.C. §  
1104, including but not limited to the relief to the Plan requested below in the Prayer For Relief.

161. ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3), authorizes a participant or beneficiary to  
bring a civil action to: “(A) enjoin any act or practice which violates any provision of this title or the

1 terms of the plan, or (B) to obtain other appropriate equitable relief (i) to redress such violations or  
2 (ii) to enforce any provisions of this title or the terms of the plan.”

3 162. Pursuant to § 502(a)(3), 29 U.S.C. § 1132(a)(3), Plaintiffs seek all available equitable  
4 relief against AT&T Services to redress their violations of ERISA and provide all appropriate relief  
5 to Plan participants, including but not limited to the relief requested below in the Prayer For Relief.

6 **VIII. PRAYER FOR RELIEF**

7 Plaintiffs pray that judgment be entered against Defendants on all claims and seek the  
8 following relief:

- 9
- 10 A. A declaratory judgment that the Plan’s Reduction Factors for Joint and Survivor  
11 Annuities to the Class violate ERISA’s actuarial equivalence requirement set forth in §  
12 204(c)(3), 29 U.S.C. § 1054(c)(3) and violate ERISA’s anti-forfeiture provision at §  
13 203(a), 29 U.S.C. § 1053(a).
- 14 B. A declaratory judgment that the Plan’s Reduction Factors for Joint and Survivor  
15 Annuities to the Class violate ERISA’s joint and survivor annuity requirements set forth  
16 in § 205(a)-(d), 29 U.S.C. § 1055(a)-(d).
- 17 C. A declaratory judgment that AT&T Services breached its fiduciary duties in violation of  
18 ERISA § 404, 29 U.S.C. § 1104 for, inter alia, following Plan terms that violated ERISA  
19 and for failing to pay benefits to all Plan participant in conformance with ERISA §§  
20 203(a), 204(c)(3), and 205(a)-(d), 29 U.S.C. §§ 1053(a), 1054(c)(3), and 1055(a)-(d).
- 21 D. Reformation of the Plan: (i) to reform the Plan to provide that Joint and Survivor  
22 Annuities Factors may only be used when they provide at least the actuarial equivalent  
23 value of a Single Life Annuity payable at the same age; (ii) to bring the Plan into full  
24 compliance with ERISA; and (iii) to pay all benefits owed to Class members based on the  
25 Reformed Plan.
- 26 E. An injunction ordering Defendants: (i) to accurately disclose to all Class members their  
27 optional forms of benefits as recalculated under the Reformed Plan, whether or not that  
28 participant has started collecting pension benefits; (ii) to eliminate and bar any future use

1 of Reduction Factors that result in less than the actuarial equivalent value of the  
2 participant's single life annuity at retirement; (iii) to bring the Plan into compliance with  
3 ERISA §§ 203(a), 204(c)(3), and 205(a)-(d), 29 U.S.C. §§ 1053(a), 1054(c)(3), and  
4 1055(a)-(d); and (iv) to recalculate and pay all amounts owed to Class members as a  
5 result of the violations of ERISA set forth herein.

6 F. An order requiring Defendants to provide an accounting of all prior payments of benefits  
7 to the Class under the Plan for which the Reduction Factors discussed herein were used to  
8 determine Joint and Survivor Annuities, and provide information to recalculate those  
9 payments to Class members in compliance with ERISA §§ 203(a), 204(c)(3), and 205(a)-  
10 (d), 29 U.S.C. §§ 1053(a), 1054(c)(3), and 1055(a)-(d).

11 G. Declaratory and injunctive relief as necessary and appropriate, including enjoining the  
12 Defendants from further violating the duties, responsibilities, and obligations imposed on  
13 them by ERISA with respect to the AT&T Plan and ordering Defendants to pay future  
14 benefits in accordance with ERISA §§ 203(a), 204(c)(3), and 205(a)-(d), 29 U.S.C. §§  
15 1053(a), 1054(c)(3), and 1055(a)-(d).

16 H. Disgorgement of any benefits or profits Defendants received or enjoyed due to the  
17 violations of ERISA §§ 203(a), 204(c)(3), and 205(a)-(d), 29 U.S.C. §§ 1053(a),  
18 1054(c)(3), and 1055(a)-(d).

19 I. Restitution of all amounts Defendants kept in the Plan but were obliged to pay to  
20 Plaintiffs and other Class members in accordance with ERISA §§ 203(a), 204(c)(3), and  
21 205(a)-(d), 29 U.S.C. §§ 1053(a), 1054(c)(3), and 1055(a)-(d).

22 J. Surcharge from Defendants totaling the amounts owed to participants and/or the amount  
23 of unjust enrichment obtained by Defendants as a result of the violations of ERISA §§  
24 203(a), 204(c)(3), and 205(a)-(d), 29 U.S.C. §§ 1053(a), 1054(c)(3), and 1055(a)-(d).

25 K. An order estopping Defendants from applying to the Class the Joint and Survivor  
26 Annuities Reduction Factors that violate ERISA §§ 203(a), 204(c)(3), and 205(a)-(d), 29  
27 U.S.C. §§ 1053(a), 1054(c)(3), and 1055(a)-(d) and requiring Defendants instead to pay  
28

1 benefits in accordance with ERISA §§ 203(a), 204(c)(3), and 205(a)-(d), 29 U.S.C. §§  
2 1053(a), 1054(c)(3), and 1055(a)-(d) .

3 L. Relief to the Plan from AT&T Services for its violations of ERISA § 404, 29 U.S.C. §  
4 1104, including a declaration that the Joint and Survivor Annuities Reduction Factors  
5 contained in the Plan violate ERISA §§ 203(a), 204(c)(3), and 205(a)-(d), 29 U.S.C. §§  
6 1053(a), 1054(c)(3), and 1055(a)-(d); restoration of losses to the Plan and its participants  
7 caused by AT&T Services' fiduciary violations; disgorgement of any benefits and profits  
8 AT&T Services received or enjoyed from the use of the Plan's assets or violations of  
9 ERISA; surcharge; payment to the Plan of the amounts owed to Class members caused by  
10 fiduciary breach so that those amounts owed can be provided to Plan participants; and all  
11 appropriate injunctive relief, such as an order requiring AT&T Services to pay all Plan  
12 participants fully ERISA-compliant benefits in the future and to ensure that all benefits it  
13 pays to participants conform to the requirements set forth in ERISA §§ 203(a), 204(c)(3),  
14 and 205(a)-(d), 29 U.S.C. §§ 1053(a), 1054(c)(3), and 1055(a)-(d).

15 M. An award of pre-judgment interest on any amounts awarded to Plaintiffs pursuant to law.

16 N. An award of Plaintiffs' attorneys' fees, expenses and/or taxable costs, as provided by the  
17 common fund doctrine, ERISA § 502(g), 29 U.S.C. § 1132(g), and/or other applicable  
18 doctrine.

19 O. An order awarding, declaring or otherwise providing Plaintiffs and the Class any other  
20 appropriate equitable relief under ERISA § 502(a), 29 U.S.C. § 1132(a), or any other  
21 applicable law, that the Court deems just and proper.

22  
23 Dated: October 7, 2021

24 Respectfully submitted,

25 /s/ Michelle C. Yau

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