Michelle C. Yau (Forthcoming *Pro Hac Vice*)
Mary J. Bortscheller (Forthcoming *Pro Hac Vice*)
Daniel R. Sutter (Forthcoming *Pro Hac Vice*)
COHEN MILSTEIN SELLERS & TOLL PLLC
1100 New York Ave. NW ● Fifth Floor
Washington, DC 20005
Telephone: (202) 408-4600
Fax: (202) 408-4699

Todd Jackson (Cal. Bar No. 202598)
Nina Wasow (Cal. Bar No. 242047)
FEINBERG, JACKSON, WORTHMAN & WASOW, LLP
2030 Addison Street ● Suite 500
Berkeley, CA 94704
Telephone: (510) 269-7998
Fax: (510) 269-7994

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Timothy Scott, Patricia Gilchrist, Karen Fisher, Gerald Klein, Helen Maldonado-Valtierra, 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.	**CLASS ACTION COMPLAINT**

Plaintiffs Timothy Scott, Patricia Gilchrist, Karen Fisher, Gerald Klein, Helen Maldonado-Valtierra, 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. This is a civil enforcement action brought under sections 502(a)(2) and 502(a)(3) of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. §§ 1132(a)(2) and (a)(3), concerning Defendants' violations of ERISA's actuarial equivalence, anti-forfeiture, joint and survivor annuity, and early retirement benefit requirements with respect to the AT&T Pension Benefit Plan (the "AT&T Plan" or the "Plan").

2. Plaintiffs and the class are all vested participants in the AT&T Plan which denies them their full ERISA-protected pension benefits. Specifically, Plaintiffs are deprived of their vested accrued benefits if they retire before age 65 and/or receive their pension benefit in the form of a Joint and Survivor Annuity. This is because the Plan's terms reduce these alternative forms of benefits using "Early Retirement Factors" and "Joint and Survivor Annuity Factors" which result in Plan participants receiving less than the actuarial equivalent of their vested accrued benefit, contrary to ERISA.

3. A participant's pension benefit is generally expressed as a monthly pension payment beginning at "normal retirement age," which is age 65 under the AT&T Plan. This monthly payment is called a single life annuity[1] because it pays a monthly benefit to the participant for her entire life (i.e., from the time she retires until her death).

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

5. Thus, if a participant elects a benefit other than a single life annuity, such alternative form of benefit must be the actuarial equivalent of the single life annuity.

6. For example, assume that a plan allows a participant with a single life annuity payment of $1,000 per month beginning at age 65 to retire one year early with a reduced monthly benefit of $980. To determine whether the two alternative retirement benefits are actuarially equivalent (one of $1,000 per month starting at age 65 and the other of $980 per month starting at age 64), the present value of each stream of payments must be the same.

7. Present value is calculated using two primary actuarial assumptions: an interest rate and a mortality table. The interest rate discounts the value of future payments to reflect the time value of money, while the mortality table provides the expected duration of that future payment stream based on published tables showing the statistical life expectancy of a person at a given age.

---

[1] An annuity provides retirement benefits paid every month from the time the participant retires until she dies.

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

9. This case concerns two ways in which the AT&T Plan improperly reduces pension benefits, in violation of ERISA's provisions and regulations.

10. First, the Plan's Early Retirement Factors reduce benefits to less than the actuarial equivalent amount of the participant's monthly benefits commencing at age 65, in violation of (i) the actuarial equivalence requirement at ERISA § 204(c)(3), 29 U.S.C. § 1054(c)(3) and (ii) ERISA's "Form and payment of benefits" rules at § 206(a)(3), 29 U.S.C. § 1056(a)(3), which provide that if a plan offers an early retirement benefit, all participants must "receive a benefit not less than the benefit to which he would be entitled at the normal retirement age, actuarially reduced under regulations prescribed by the Secretary of the Treasury."

11. For example, under most programs[2] of the Plan, if a participant's normal pension benefit beginning at age 65 is $10,000 per month, and she retires at age 60, her monthly benefit is reduced by a factor of 0.58.[3] As a result, the value of her monthly benefit is 58% of $10,000, or $5,800 per month. That level of reduction is prohibited by ERISA because the actuarial equivalent benefit she is entitled to receive under ERISA is approximately $7,090 per month.

12. Second, the Plan's reduction factors used to calculate joint and survivor annuity benefits violate the (i) the actuarial equivalence requirement at ERISA § 204(c)(3), 29 U.S.C. § 1054(c)(3) and (ii) ERISA's "Qualified Joint and Survivor Annuity" rules at § 205(a)-(d), 29 U.S.C.

---

[2] Benefits under the Plan are provided through separate "programs," each of which is a separate portion of the Plan that provides benefits to a particular group of participants or beneficiaries. To the best of Plaintiffs' knowledge based on the available information, the separate programs correspond to subsidiary companies which merged with or were acquired by AT&T Inc. over time.

[3] *See* Table 2, *infra*, showing the Early Reduction Factors for the 10 non-cash balance programs in the Plan. The Reduction Factor is 0.58 for six of the 10 programs in the Plan, 0.60 for two of the programs and 0.58 for two programs.

§ 1055(a)-(d), which provide that all ERISA governed defined benefit plans provide Qualified Joint and Survivor Annuities, which are the "actuarial equivalent of a single annuity for the life of the participant." ERISA § 205(d)(1)(B), 29 U.S.C. § 1055(d)(1)(B).

13. Pension plans must offer married participants the option of receiving a payment stream for their life and their spouse's life after the retiree dies; this is a "joint and survivor annuity." ERISA § 205(a)-(d), 29 U.S.C. § 1055(a)-(d). The joint annuity is expressed as a percentage of the benefit paid during the retiree's life. For married participants, the joint and survivor annuity is the default form of pension payment unless the spouse consents to the participant receiving a single life annuity.

14. Relevant here, the Plan's Joint and Survivor Annuity Factors reduce benefits to less than the actuarial equivalent amount of a participant's benefit expressed as a single life annuity at the age of retirement. For example, if, at retirement, a participant's single life annuity benefit is $10,000 per month, and she is married, her default form of benefit is a 50% Joint and Survivor Annuity, which is reduced by a factor of 0.90 for most programs under the Plan.[4] As a result, the participant's monthly benefit is 90% of $10,000 per month, or $9,000 per month. This level of reduction is prohibited by ERISA because the actuarial equivalent benefit she is entitled to receive under ERISA is approximately $9,200 per month.

15. Additionally, the Plan maintains Joint and Survivor Annuity Factors (set forth below in Table 1) that reduce those benefits to less than the actuarial equivalent of the participant's single life annuity benefit, even though the applicable Treasury regulations[5] require that "[a] qualified joint and survivor annuity must be at least the actuarial equivalent of the [single life annuity]. Equivalence may be determined, on the basis of consistently applied reasonable actuarial factors[.]" 26 CFR § 1.401(a)-11(b)(2).

---

[4] See Table 1, *infra*, showing the Joint and Survivor Factors for the 15 programs in the Plan. The Reduction Factor is 0.90 for nine of programs in the Plan, 0.88 for three of the programs, and 0.85 for the remaining three programs.

[5] The Tax Code contains numerous provisions which correspond to ERISA; here the provision which corresponds to ERISA § 205 (29 U.S.C. § 1055) is 26 U.S.C. § 401(a)(11).

16. In sum, ERISA requires (1) that if a plan allows a participant to retire early with a reduced monthly pension, the value of such reduced pension must be actuarially equivalent to the participant's monthly pension benefit commencing at age 65; and (2) that default joint and survivor annuities paid to married retirees must also be actuarially equivalent to the single life annuity available to them at a particular retirement age. In violation of ERISA, the Early Retirement Factors and the Joint and Survivor Annuity Factors set forth in the AT&T Plan reduce participant benefits below their actuarial equivalent value.

17. To the best of Plaintiffs' knowledge based on the available information, the Early Retirement Factors and the Joint and Survivor Annuity Factors in the AT&T Plan generally applicable to the Class have not been updated in over a decade, despite dramatic increases in longevity amongst the American public. Because the Early Retirement and the Joint and Survivor Annuity Factors have not been updated to be in line with reasonable actuarial assumptions, they do not yield actuarially equivalent payments to Class members as required by ERISA. As a result, Defendants have improperly reduced Class members' pension benefits in violation of ERISA §§ 203(a), 204(c)(3), 205(d)(1)(B), 206(a)(3). 29 U.S.C. §§ 1053(a), 1054(c)(3), 1055(d)(1)(B) and 1056(a)(3).

18. When retiring or deciding whether to retire, Plan participants like Plaintiffs rely upon information provided to them by Defendants that describes the retirement options available to them. Defendants' incorporate the Early Retirement Factors and the Joint and Survivor Annuity Factors into their disclosures, leading Plan participants to believe that certain option forms of retirement benefit are less valuable to them that ERISA provides. In effect, Defendants' disclosures that are based on the Early Retirement Factors and the Joint and Survivor Annuity Factors cause participants to delay retirement or avoid certain forms of benefit that have been dramatically reduced below levels ERISA protects.

19. The Class members, consisting of participants and beneficiaries of the AT&T Plan, are harmed by Defendants' calculation and payment of benefits that result in less than the actuarial equivalent of their protected retirement benefits, in violation of ERISA.

DOCKET ALARM

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts

Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research

With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips

Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.