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11 **UNITED STATES DISTRICT COURT**  
 12 **CENTRAL DISTRICT OF CALIFORNIA**

14 LUIS HERNANDEZ, individually  
 15 and as representative of a class of  
 16 participants and beneficiaries and on  
 17 behalf of the AT&T Retirement  
 18 Savings Plan,

17 Plaintiff,

18 v.

19 AT&T SERVICES, INC.; and DOES  
 20 1-10, inclusive

21 Defendants.

CASE NO.:

**CLASS ACTION COMPLAINT  
 FOR:**

- (1) **BREACH OF FIDUCIARY DUTY, 29 U.S.C. §1104(a);**
- (2) **BREACH OF ERISA’S ANTI-INUREMENT PROVISION, 29 U.S.C. §1103(c)(1);**
- (3) **BREACH OF ERISA’S PROHIBITED TRANSACTIONS, 29 U.S.C. § 1106(a)(1) and (b)(1); AND**
- (4) **FAILURE TO MONITOR FIDUCIARIES.**

**[DEMAND FOR TRIAL BY JURY]**

1 Plaintiff Luis Hernandez, individually and as representative of a class of  
2 participants and beneficiaries and on behalf of the AT&T Retirement Savings Plan  
3 (“Plaintiff”), alleges based upon information and belief as follows:

4 **NATURE OF ACTION**

5 1. This action arises out of Defendant AT&T Services, Inc.’s  
6 (“Defendant”), wrongful use of assets in their employees’ 401k retirement plan. As  
7 set forth herein, Defendants used forfeited plan assets to reduce employer  
8 contribution obligations, rather than for the benefit of plan participants, in violation  
9 of the Employment Retirement Income Security Act (“ERISA”) and Defendant’s  
10 fiduciary responsibilities. In this action, Plaintiff seeks damages in connection with  
11 Defendant’s wrongful conduct in misusing forfeited Plan assets for its own benefit.

12 **JURISDICTION AND VENUE**

13 2. This action is brought under 29 U.S.C. §§ 1132(a), (e), (f) and (g) as it  
14 involves a claim by Plaintiff for employee benefits under an employee benefit plan  
15 regulated and governed by ERISA. Subject matter jurisdiction is predicated under  
16 these code sections as well as 28 U.S.C. § 1331 as this action involves a federal  
17 question.

18 3. The Court has personal jurisdiction over Defendants because ERISA  
19 provides for nationwide service of process, and each defendant has minimum  
20 contacts with the United States. See 29 U.S.C. § 1132(e)(2).

21 4. The claims of Plaintiffs and the putative class arise out of the Plan  
22 issued, administered, and/or implemented in this District. Moreover, Plaintiffs  
23 reside in this District. Thus, venue is proper in this judicial district pursuant to 29  
24 U.S.C. §1132(e)(2) (setting forth special venue rules applicable to ERISA actions).

25 **PARTIES**

26 5. Plaintiff Luis Hernandez is an individual who, during the relevant  
27 period resided in Los Angeles, California. Plaintiff was at all relevant times  
28 participating in the Plan at issue.

1           6.     The AT&T Retirement Savings Plan (the “Plan”) is a defined  
2 contribution, individual account, employee pension benefit plan under 29 U.S.C.  
3 §1002(2)(A) and § 1002(34) and is subject to the provisions of ERISA pursuant to  
4 29 U.S.C. § 1003(a)

5           7.     Plaintiff is informed and believes, and on that basis alleges, that  
6 Defendant AT&T Services, Inc. is a company, authorized to conduct and is actually  
7 conducting business in the State of California, and acts as the Plan Administrator.

8           8.     Defendants exercised discretionary authority and/or control over the  
9 management and/or administration of the Plan, and are fiduciaries of the Plan,  
10 including pursuant to 29 U.S.C. §1002(21)(A).

11           9.     Plaintiff is currently ignorant of the true names and capacities, whether  
12 individual, corporate, associate, or otherwise, of the defendants sued herein under  
13 the fictitious names Does 1 through 10, inclusive, and therefore sue such defendants  
14 by such fictitious names. Plaintiffs will seek leave to amend this complaint to  
15 allege the true names and capacities of said fictitiously named defendants when  
16 their true names and capacities have been ascertained. Plaintiffs are informed and  
17 believe and thereon alleges that each of the fictitiously named defendants is legally  
18 responsible in some manner for the events and occurrences alleged herein, and for  
19 the damages suffered by the Class.

20           10.    Plaintiff is informed and believes and thereon alleges that all  
21 defendants, including the fictitious Doe defendants, were at all relevant times acting  
22 as actual agents, conspirators, ostensible agents, alter egos, partners and/or joint  
23 venturers and/or employees of all other defendants, and that all acts alleged herein  
24 occurred within the course and scope of said agency, employment, partnership, and  
25 joint venture, conspiracy or enterprise, and with the express and/or implied  
26 permission, knowledge, consent authorization and ratification of their co-  
27 defendants; however, each of these allegations are deemed “alternative” theories  
28 whenever not doing so would result in a contradiction with other allegations.

**FACTUAL ALLEGATIONS**

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11. The assets of the Plan are held in a trust fund pursuant to 29 U.S.C. §1103(a).

12. The Plan is funded by a combination of employee/participant contributions (usually paid through wage withholdings) and employer contributions, which are deposited into the Plan’s trust fund. Once deposited into the Plan’s trust fund, all employee/participant and employer contributions become assets of the Plan.

13. Participants in the Plan immediately vest in their own contributions, and earnings on their contributions. Plaintiff is informed and believes, and on that basis alleges, that participants vest in the employer contributions after 3 years of service.

14. Participants who have a break in service prior to full vesting of employer contributions, forfeit the balance of unvested employer contributions, and Defendants exercise control over how these Plan assets are thereafter allocated.

15. Plaintiff is informed and believes, and on that basis alleges, that as part of a wrongful pattern and practice, Defendants have wrongfully and consistently used forfeited nonvested plan assets for its own benefit, to reduce future employer contributions, rather than for the benefit of Plan participants. Defendant’s use of Plan forfeited assets to offset its employer contributions violates ERISA statutes, including but not limited to, 29 U.S.C. §§1103(c)(1), 1104(a)(1), and 1106.

16. Plaintiff is informed and believes, and on that basis alleges, that the Plan provides discretion for Defendants to use forfeited assets for the benefit of Plan participants, including by paying expenses, but Defendant has elected to benefit itself instead, by using forfeited Plan assets to offset future employer contributions.

17. Defendants Form 5500 for 2021 states that there were 10,952 Plan “participants who terminated employment during the plan year with accrued

1 benefits that were less than 100% vested .” Defendant’s Form 5500 statement for  
2 2021 states “all expenses incident to the administration and operation of the Plans  
3 are charged to participants.”

4 18. Defendants Form 5500 for 2022 states that there were 9,622 Plan  
5 “participants who terminated employment during the plan year with accrued  
6 benefits that were less than 100% vested .” Defendant’s Form 5500 statement for  
7 2021 states “all expenses incident to the administration and operation of the Plans  
8 are charged to participants.”

9 19. Defendants Form 5500 for 2023 states that there were 7,642 Plan  
10 “participants who terminated employment during the plan year with accrued  
11 benefits that were less than 100% vested .” Defendant’s Form 5500 statement for  
12 2021 states “all expenses incident to the administration and operation of the Plans  
13 are charged to participants.”

14 20. Plaintiff is informed and believes, and on that basis alleges, that during  
15 the period at issue in this case, Defendant wrongfully used millions of dollars in  
16 forfeited Plan assets to offset employer contributions, instead of using it for the  
17 benefit of participant by, among other things, paying administrative expenses  
18 charged to participants.

19 21. Defendants’ allocation of forfeited fund assets to reduce its own  
20 employer contributions benefitted Defendants, but harmed the Plan and participants  
21 in the Plan, by reducing Plan assets, and/or by causing participants to incur  
22 expenses that could otherwise have been covered in whole or in part by forfeited  
23 funds.

24 22. By choosing to use forfeited Plan assets to benefit itself and not the  
25 Plan or the Plan’s participants, Defendants have placed its own interests above the  
26 interests of the Plan and its participants  
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**CLASS ACTION ALLEGATIONS**

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2 23. Plaintiff bring this action on behalf of herself and all others similarly  
3 situated as a Class Action pursuant to Federal Rules of Civil Procedure Rule 23.  
4 Pursuant to Rule 23(b)(1) and (b)(2), Plaintiffs seek certification of a class defined  
5 as follows:

6 All participants and beneficiaries of AT&T Retirement Savings Plan,  
7 who participated in the plan at anytime within the longest statute of  
8 limitations for each claim pled, excluding Defendants and members of  
9 the Committees.

10 24. Plaintiffs and the Class reserve the right under Federal Rule of Civil  
11 Procedure Rule 23(c)(1)(C) to amend or modify the class to include greater  
12 specificity, by further division into subclasses, or by limitation to particular issues.

13 25. This action has been brought and may be properly maintained as a  
14 class action under the provisions of Federal Rules of Civil Procedure Rule 23  
15 because there is a well-defined community of interest in the litigation and the  
16 proposed class is easily ascertainable.

17 **A. Numerosity**

18 26. The potential members of the proposed class as defined are so  
19 numerous that joinder of all the members of the proposed class is impracticable.  
20 While the precise number of proposed class members has not been determined at  
21 this time, Plaintiff is informed and believes that there are a substantial number of  
22 participants and beneficiaries Plan who have been similarly affected.

23 **B. Commonality**

24 27. Common questions of law and fact exist as to all members of the  
25 proposed class.  
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1                   **C. Typicality**

2           28.    The claims of the named Plaintiff is typical of the claims of the  
3 proposed class. Plaintiff and all members of the class are similarly affected by  
4 Defendants’ wrongful conduct.

5                   **D. Adequacy of representation**

6           29.    Plaintiff will fairly and adequately represent and protect the interests of  
7 the members of the proposed class. Counsel who represent Plaintiff are competent  
8 and experienced in litigating large and complex class actions.

9                   **E. Superiority of class action**

10          30.    A class action is superior to all other available means for the fair and  
11 efficient adjudication of this controversy. Individual joinder of all members of the  
12 proposed Class is not practicable, and common questions of law and fact exist as to  
13 all class members.

14          31.    Class action treatment will allow those similarly situated persons to  
15 litigate their claims in the manner that is most efficient and economical for the  
16 parties and the judicial system. Plaintiff is unaware of any difficulties that are likely  
17 to be encountered in the management of this action that would preclude its  
18 maintenance as a class action.

19                  **F. Rule 23(b) requirements**

20          32.    Inconsistent or varying adjudications with respect to individual  
21 members of the class would establish incompatible standards of conduct.

22          33.    Adjudications with respect to individual class members would be  
23 dispositive of the interests of the other members not parties to the individual  
24 adjudications or would substantially impair or impede their ability to protect their  
25 interests.

26          34.    Defendants have acted or refused to act on grounds generally  
27 applicable to the class, thereby making appropriate final injunctive relief or  
28 corresponding declaratory relief with respect to the class as a whole.

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**FIRST CLAIM FOR RELIEF**  
**BREACH OF FIDUCIARY DUTY**  
**29 U.S.C. § 1104(a)**

35. Plaintiff re-alleges and incorporates by reference the allegations contained in the preceding paragraphs of this complaint, as though fully set forth herein.

36. Under 29 U.S.C. § 1104(a)(1)(A), Defendants were required to discharge their duties owed to the Plan “solely in the interest of the participants and beneficiaries and . . . for the exclusive purpose of: (i) providing benefits to participants and their beneficiaries, and (ii) defraying reasonable expenses of administering the plan.” Defendants breached their fiduciary duty under 29 U.S.C. § 1104(a)(1)(A) by utilizing forfeited Plan assets for its benefit, rather than the benefit of Plan participants. Defendants have chosen to apply forfeited Plan assets to decrease future employer contributions, instead of using those funds for the benefit of Plan participants. In doing so, Defendants placed their interests above the interests of Plan participants and beneficiaries.

37. Pursuant to 29 U.S.C. § 1104(a)(1)(B), Defendants were required to discharge their duties with respect to the Plan “with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.” Defendants breached their duty of prudence under 29 U.S.C. § 1104(a)(1)(B) by declining to use the forfeited funds in the plan for the benefit of Plan participants, and instead using such Plan assets to reduce the Company’s own contributions to the Plan. Defendants failed to engage in a reasoned and impartial decision making process in deciding to use the forfeited funds in the Plan to reduce the Company’s own contribution expenses. Defendants failed to act in a prudent manner, in the best interest of the Plan’s participants, and

1 failed to consider whether participants would be better served by another use of  
2 these Plan assets after considering all relevant factors.

3 38. Pursuant to 29 U.S.C. § 1104(a)(1)(D), Defendants were required to  
4 discharge duties solely in the interest of Plan participants, and “in accordance with  
5 the documents and instruments governing the plan insofar as such documents and  
6 instruments are consistent with the provisions of” ERISA. Defendants breached  
7 their fiduciary duty under Section 1104(a)(1)(D) by using forfeited Plan assets in  
8 violation of Plan terms. Defendants also breached their fiduciary duty under  
9 Section 1104(a)(1)(D) by using forfeited Plan assets in violation of ERISA statutes,  
10 including the anti-inurement and prohibited transaction statutes, as alleged herein.

11 39. Defendants’ wrongful conduct, as alleged herein, caused the Plan to  
12 receive fewer future employer contributions than it would otherwise received, and  
13 depleted Plan assets.

14 40. As a direct and proximate cause of Defendants’ fiduciary breaches, the  
15 Plan suffered injury and losses and, pursuant to 29 U.S.C. § 1109, Defendants’ are  
16 liable for such losses.

17 41. Each Defendant knowingly participated in the breach of the other  
18 Defendants, knowing that such acts were a breach, enabled other Defendants to  
19 commit a breach by failing to lawfully discharge its own fiduciary duties, knew of  
20 the breach by the other Defendants and failed to make any reasonable effort under  
21 the circumstances to remedy the breach. Thus, each Defendant is liable for the  
22 losses under 29 U.S.C. § 1105(a).

23 **SECOND CLAIM FOR RELIEF**

24 **BREACH OF ERISA’S ANTI-INUREMENT PROVISION**

25 **29 U.S.C. §1103(c)(1)**

26 42. Plaintiff re-alleges and incorporates by reference the allegations  
27 contained in the preceding paragraphs of this complaint, as though fully set forth  
28 herein.

1 43. Pursuant to 29 U.S.C. § 1103(c)(1), “the assets of a plan shall never  
2 inure to the benefit of any employer and shall be held for the exclusive purpose of  
3 providing benefits to participants in the plan and their beneficiaries and defraying  
4 reasonable expenses of administering the plan.”

5 44. The funds in a participant’s accounts that are forfeited when a break in  
6 service occurs prior to full vesting are assets of the Plan.

7 45. By using Plan assets for its own benefit, to reduce its own future  
8 employer contributions to the Plan, thereby saving itself millions of dollars in  
9 contribution costs, Defendants caused the assets of the Plan to inure to the benefit  
10 of the employer in violation of 29 U.S.C. § 1103(c)(1).

11 46. Pursuant to 29 U.S.C. § 1109(a), Defendants are liable for the Plan  
12 losses resulting from violation of ERISA’s anti inurement provision as alleged in  
13 this claim, and must restore to the Plan all profits secured through their use of Plan  
14 assets, and is subject to other equitable or remedial relief as appropriate

15 **THIRD CLAIM FOR RELIEF**

16 **BREACH OF ERISA’S PROHIBITED TRANSACTIONS**

17 **29 U.S.C. § 1106**

18 47. Plaintiff re-alleges and incorporates herein by reference the allegations  
19 contained in the preceding paragraphs of this complaint, as though fully set forth  
20 herein.

21 48. 29 U.S.C. § 1106(a)(1) provides that “[a] fiduciary with respect to a  
22 plan shall not cause the plan to engage in a transaction, if he knows or should know  
23 that such transaction constitutes a direct or indirect . . . exchange . . . of any  
24 property between the plan and a party in interest . . . or use by or for the benefit of a  
25 party in interest, of any assets of the plan.” Defendants are parties in interest, as  
26 that term is defined under 29 U.S.C. §1002 (14), because they are Plan fiduciaries  
27 and/or employer of Plan participants.

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1 55. Defendants had a duty to monitor the person(s) to whom it delegated  
2 fiduciary responsibilities, and to take prompt action to protect the plan and correct  
3 any breaches of fiduciary duty or violation of ERISA statutes.

4 56. Defendants breached its duty to monitor the fiduciaries to whom it  
5 delegated responsibility for Plan management by, among other things, unreasonably  
6 failing to monitor the use of forfeited funds, failing to take steps to ensure that its  
7 fiduciary duties and ERISA statutes were properly complied with respect to Plan  
8 assets, and permitting Defendants to continuously use forfeited funds for the benefit  
9 of the employer, rather than Plan participants, as alleged herein.

10 57. As a direct and proximate cause of Defendants' breach of their duty to  
11 monitor fiduciaries, the Plan suffered losses, as alleged herein.

12 **REQUEST FOR RELIEF**

13 Wherefore, Plaintiff, on behalf of the Plan and all similarly situated Plan  
14 participants and beneficiaries, prays for judgment against Defendants as follows:

15 1. That Defendants have breached their fiduciary duties and engaged in  
16 prohibited conduct and transactions as described above;

17 2. That Defendants are personally liable to make good to the Plan all  
18 losses to the Plan resulting from each violation of ERISA described above, and to  
19 otherwise restore the Plan to the position it would have occupied but for these  
20 violations;

21 3. That all assets and profits secured by Defendants as a result of each  
22 violation of ERISA described above are to disgorged;

23 4. For an accounting to determine the amounts Defendants must make  
24 good to the Plan under 29 U.S.C. § 1109(a);

25 5. Removal of the fiduciaries who have breached their fiduciary duties  
26 and enjoin them from future ERISA violations;

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- 1           6. Surcharge against Defendants and in favor of the Plan all amounts
- 2 involved in any transactions which such accounting reveals were improper,
- 3 excessive and/or in violation of ERISA;
- 4           7. Certify the case as a class action;
- 5           8. Award attorneys' fees and costs under 29 U.S.C. § 1132(g)(1) and the
- 6 common fund doctrine;
- 7           9. Award class representatives a service award.
- 8           10. Order the payment of interest to the extent it is allowed by law; and
- 9           11. Grant other equitable or remedial relief as the Court deems
- 10 appropriate.

11  
12 DATED: January 27, 2025

HAFFNER LAW PC

13  
14 By: *J. Haffner*  
15 Joshua H. Haffner  
16 Alfredo Torrijos  
17 Vahan Mikayelyan  
18 Attorneys for Plaintiff and all  
19 Others similarly situated  
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**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a trial by jury on all claims so triable.

DATED: January 27, 2025

HAFFNER LAW PC

By: *J. Haffner*  
Joshua H. Haffner  
Alfredo Torrijos  
Vahan Mikayelyan  
Attorneys for Plaintiff