

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA**

**WILLIAM LAWSON, JOE TRIPODI, THOMAS  
WHITTINGTON, JASON PHILLIPS, AND  
NESBIT B. (“BRAD”) SILLS, Individually and On  
Behalf of All Others Similarly Situated,**

*Plaintiffs,*

v.

**BELLSOUTH TELECOMMUNICATIONS, INC.,  
d/b/a AT&T SOUTHEAST a.k.a. AT&T  
ALABAMA/AT&T FLORIDA/AT&T GEORGIA/  
AT&T KENTUCKY/AT&T LOUISIANA/AT&T  
MISSISSIPPI/AT&T NORTH CAROLINA,  
AT&T SOUTH CAROLINA/AT&T TENNESSEE,**

*Defendant.*

**COLLECTIVE ACTION  
COMPLAINT**

**JURY TRIAL  
DEMANDED**

**COLLECTIVE ACTION COMPLAINT**

Plaintiffs William Lawson, Joe Tripodi, Thomas Whittington, Jason Phillips, and Nesbit B. “Brad” Sills (“Plaintiffs” or “Class Representatives”) are First Level (a.k.a. Level One) Managers of Defendant BellSouth Telecommunications, Inc. d/b/a AT&T Southeast a.k.a. AT&T Alabama/AT&T Florida/AT&T Georgia/AT&T Kentucky/AT&T Louisiana/AT&T Mississippi/AT&T North Carolina/AT&T South Carolina/AT&T Tennessee (“AT&T,” “BellSouth,” “BellSouth/AT&T” or “Defendant,” unless otherwise specified). Plaintiffs, individually and on behalf of all other similarly situated First Levels (as defined below), complain by their attorneys Sanford Wittels & Heisler, LLP, Buckley & Klein, LLP, and the Law Office of Edmond Clark as follows:

**I. INTRODUCTION – NATURE OF THE ACTION**

1. An employer’s obligation to pay its employees overtime wages is more than a matter of private concern between the parties. That obligation is founded on a

compelling public policy judgment that members of a modern, humane society are not simply indentured servants but are entitled to work a livable number of hours at a livable wage. Minimum wage and overtime laws mark the boundary between a humane society and its Industrial Era precursor of child labor, company scrip, and eighteen-hour work days. In addition, the statutes and regulations compelling employers to pay overtime were designed not only to benefit individual workers but also to serve a fundamental societal goal: reducing unemployment by giving the employer a disincentive to concentrate work in a few overburdened hands and an incentive to instead hire additional employees. Especially in today's economic climate, the importance of spreading available work to reduce unemployment cannot be overestimated.

2. This case arises out of Defendant BellSouth's systemic, company-wide unlawful treatment of Plaintiffs and thousands of similarly-situated low-level First Level employees it wrongfully classifies as exempt from overtime compensation under the federal Fair Labor Standards Act ("FLSA") and the equivalent wage and hour protections incorporated into the law.

3. BellSouth/AT&T employs a multi-tiered management structure with at least seven levels. Plaintiffs and the First Level Managers similarly situated to Plaintiffs are at the bottom of the pyramid, acting as low-level functionaries whose essential role is to relay information back and forth between technicians – bargaining-unit employees – and management. Plaintiffs and the members of the proposed class have a minimal role in supervising their technicians and have no authority to make employment-related decisions. Furthermore, they are tightly controlled by Company policy and by their supervisors, do not exercise discretion or independent judgment as to matters of

significance, and their job duties are not directly related to the Company's management policies or general business operations.

4. Nevertheless, Defendant's First Levels are caught in a numbers crunch between BellSouth/AT&T's richly compensated executives and bargaining-unit employees (who have generous benefits packages and, with overtime pay, frequently earn six-figure salaries). Determined to squeeze where it can, Defendant deliberately flouts federal and state wage and hour protections in order to extract grueling hours from the company's small army of Level Ones, without paying time-and-a-half overtime pay as required by law.

5. Until approximately December 2007, Defendant properly classified Plaintiffs and similarly-situated Level Ones as non-exempt from overtime and paid them time-and-a-half overtime wages for most of the hours they worked in excess of 40 hours per week. However, in the ordinary course of Plaintiffs' and the class members' duties, the company expected them to routinely work approximately 2 hours per day off the clock without compensation. It is an unwritten rule at the company that Level Ones work for about an hour before and an hour after their technicians' 8-hour shifts.

6. In or about September 2007, following BellSouth's purchase by AT&T and during the transition process from the former BellSouth to AT&T, Defendant intentionally reclassified Plaintiffs and the class members as exempt from overtime in order to defray labor costs. This reclassification was made effective in approximately December 2007. Plaintiffs and the class members do not have an increased level of responsibility since being reclassified, and if anything have less authority than they did prior to the takeover by AT&T. Nevertheless, Defendant wrongfully and willfully

misclassifies these employees as exempt from overtime under these laws and therefore refuses to compensate them for hours over 40 worked in any given week, much less provide the required time-and-a-half overtime pay.

7. In addition to their ordinary working hours (ranging from approximately 50 to 70 hours per week), the Plaintiffs' and class members' overloaded work schedules include working from home to keep up with clerical tasks and frequent weekend tasks. Furthermore, they are required to perform weekly or rotating "duty," during which, along with their regular hours and functions, class members remain on-call 24 hours per day for a seven-day period and may be called into their garages or out into the field at any time. Class members typically work many additional hours on their "duty" weeks and may work a total of up to *100 hours or more*. Prior to being reclassified in or about December 2007, Plaintiffs and the class members received time-and-a-half overtime pay for the hours they worked when on duty but no longer receive any compensation for this time.

8. Plaintiffs sue on behalf of themselves and other similarly situated Level Ones who worked for BellSouth and who elect to opt into this action pursuant to the Fair Labor Standards Act ("FLSA"), 29 U.S.C. §§ 201 *et seq.*, specifically the collective action provision of the FLSA, 29 U.S.C. § 216(b). This action claims that Defendant has violated the wage-and-hour provisions of the FLSA by depriving Plaintiffs, as well as others similarly situated to Plaintiffs, of their lawful overtime wages.

9. Since at least 2006, Defendant has willfully committed widespread violations of the FLSA by forcing similarly-situated Level Ones to work off-the-clock without compensation. The off-the-clock class is the following:

All First Level (or Level One Managers) employed by BellSouth from December 2006 and thereafter who were assigned technicians as direct reports and who were

classified by the company as non-exempt employees under the FLSA.

10. Since at least 2007, Defendant has willfully committed widespread violations of the FLSA by misclassifying all similarly-situated Level Ones as salaried *exempt* employees regardless of their actual duties and responsibilities. In actuality, the members of the Plaintiff collective class are *not exempt* from the wage and hour laws. The misclassification class is the following:

All First Level (or Level One Managers) employed by BellSouth from December 2006 and thereafter who were assigned technicians as direct reports and who were classified by the company as exempt employees under the FLSA.

11. Accordingly, Defendant is liable for failing to pay these employees for all hours worked in excess of 40 hours per week at a rate of one-and-one-half times their regular rate of pay.

12. Plaintiffs and all similarly situated employees who elect to participate in this action seek unpaid compensation, an equal amount of liquidated damages and/or prejudgment interest, attorneys' fees, and costs pursuant to 29 U.S.C. § 216(b).

## **II. JURISDICTION AND VENUE**

13. This Court has jurisdiction over the claims asserted in this action pursuant to 28 U.S.C. § 1331, because the action arises under a federal statute, 29 U.S.C. § 216(b).

14. Defendant is subject to personal jurisdiction because it is a Georgia corporation with its principal place of business in Georgia. This case arises from Defendant's wrongful conduct in Georgia, where BellSouth maintains its corporate headquarters and employs a substantial portion of the proposed class.

15. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(1) and (2). A substantial part of the events and the omissions giving rise to Plaintiffs' claims

occurred in this district. Additionally, Defendant is deemed to reside in this district under 1391(c) because it is subject to personal jurisdiction in the district.

16. This Court is empowered to issue a declaratory judgment and further relief pursuant to 28 U.S.C. §§ 2201 and 2202.

### **III. PARTIES**

#### **A. The Representative Plaintiffs**

17. **Plaintiff William Lawson** (“Mr. Lawson”) resides in Vero Beach, Florida. Mr. Lawson has worked for BellSouth and its predecessor companies since 1977 and has been a First Level Manager since approximately 2001.

18. **Plaintiff Joe Tripodi** (“Mr. Tripodi”) resides in Port St. Lucie, Florida. Mr. Tripodi has worked for BellSouth since 1998 and has been a First Level Manager since November 2003.

19. **Plaintiff Thomas Whittington** (“Mr. Whittington”) resides in Vero Beach, Florida. Mr. Whittington has worked for BellSouth and its predecessor companies from 1973 to 1975 and 1977 to the present. Mr. Whittington has been a First Level Manager since 1996.

20. **Plaintiff Jason Phillips** (“Mr. Phillips”) resides in Jensen Beach, Florida. Mr. Phillips has worked for BellSouth since 1990 and has been a First Level Manager since 2001.

21. **Plaintiff Brad Sills** (“Mr. Sills”) resides in Jensen Beach, Florida. Mr. Sills has worked for BellSouth since 1989 and was a First Level Manager from approximately 2000 until July 2009.

**B. The Defendant**

22. Defendant BellSouth Telecommunications, Inc. (“BellSouth”) a subsidiary of AT&T, Inc., is, and at all times material hereto was, a corporation organized under the laws of the Georgia with its headquarters and principal place of business in Atlanta, Georgia. Defendant BellSouth, which does business as AT&T Southeast and as AT&T Alabama/AT&T Florida/AT&T Georgia/AT&T Kentucky/AT&T Louisiana/AT&T Mississippi/AT&T North Carolina/AT&T South Carolina/AT&T Tennessee, is a regional operating company for AT&T that provides various telecommunications services throughout a nine-state region in the Southeastern United States. BellSouth is under the umbrella of AT&T’s regional holding company BellSouth Corp., d/b/a AT&T South, also based in Atlanta.

23. Following the merger of AT&T and SBC in 2005 under the corporate name AT&T, Inc., BellSouth was purchased by AT&T in 2006. The acquisition was formally executed and became officially finalized in December 2006. During the course of this acquisition, AT&T consolidated and standardized BellSouth’s operations and instituted numerous changes.

24. Since at least 2006, throughout BellSouth’s nine-state territory, Level Ones with crews of technicians have had the same basic duties and responsibilities, and have been subject to common policies, practices, and procedures – including overtime policies – which emanate from BellSouth and/or AT&T corporate headquarters. These policies include Defendant’s uniform expectation prior to approximately December 2007 that Plaintiffs and the class members routinely work off-the-clock in order to complete their duties each day. Furthermore, in or about December 2007, Defendant uniformly

reclassified Plaintiffs and the class member as exempt company “executives” and thus no longer compensated them for any time they worked in excess of 40 hours per week.

25. Defendant, as a regulated business pursuant to the rules of the Federal Communications Commission, engages in interstate commerce or engages in the delivery of goods and services for commerce.

26. The overtime wage provisions set forth in § 206 and § 207 of the FLSA, apply to Defendant. The class members’ Level One jobs are not positions involving work that falls within any exception or exemption set forth in 29 U.S.C. § 213(a)(1).

#### **IV. INDIVIDUAL FACTUAL ALLEGATIONS**

##### **A. Plaintiff William J. Lawson**

27. Plaintiff Lawson began working for Southern Bell (later renamed BellSouth), a former AT&T operating company, in 1977 as an outside plant technician. Mr. Lawson’s position as a technician was classified as “non-exempt” by the company and thus Mr. Lawson was paid overtime wages

28. Mr. Lawson became a First Level Manager at BellSouth in or about 2000. He is currently assigned as a Network Manager for Installation and Repair, and has crews of technicians assigned to him out of two yards in Vero Beach and Sebastian, Florida. These technicians perform installation and repair on residence and business lines.

29. As a First Level Manager at BellSouth from 2000 to approximately December 2007, Mr. Lawson was categorized as “non-exempt” by BellSouth (and later AT&T), and thus was paid overtime wages for a portion of the numerous hours he worked in excess of 40 during a given work week. In particular, Mr. Lawson was compensated when he was specifically called in to work overtime or when he worked on-

call “duty.” However, Mr. Lawson was routinely expected to work approximately 2 hours per day off-the-clock without any pay in order to complete his daily duties, primarily clerical tasks.

30. As of approximately December 2007, Defendant reclassified Mr. Lawson and all similarly situated Level Ones as exempt and therefore no longer compensated them for on call duty or specifically-requested overtime. In addition to these hours, Mr. Lawson and his peers are still expected to work approximately two hours or more without pay on a daily basis.

31. BellSouth/AT&T’s decision to reclassify Mr. Lawson and all Level Ones with crews of technicians as “exempt” and not entitled to overtime was announced suddenly in or about September 2007, effective that December. This reclassification had no legitimate basis, as neither Mr. Lawson’s nor any of the class members’ job duties substantially changed after the AT&T purchase. Mr. Lawson and all Level Ones in the plaintiff class have been performing the same basic duties as “AT&T Level Ones” that they performed as “BellSouth Level Ones.” In fact, Mr. Lawson and his peers have had less authority and discretion following the transition to AT&T and are more tightly controlled by the company.

32. Throughout the period from 2000 to the present, Mr. Lawson has been a First Level Manager with a crew of technicians. His primary duties include: passing work to technicians, relaying information between the Company and the technicians, clerical tasks and paperwork, and performing safety and quality inspections (spot checks) with a detailed checklist provided by the Company.

33. In his role as a First Level, Mr. Lawson does not exercise discretion or

independent judgment. During the last several years, particularly following BellSouth's purchase by AT&T in 2006, Mr. Lawson's "authority" has been even more severely cordoned.

34. Much of Mr. Lawson's time at work is spent on basic clerical tasks.

35. Mr. Lawson does not determine what work is to be done or on what time frame. Work assignments are generated by computer and given to technicians by the Company. Mr. Lawson has only a minor role in readjusting work assignments, which does not require the exercise of significant discretion.

36. When jobs require overtime hours, Mr. Lawson does not have the authority to determine which technician will work the additional hours. Instead, technicians volunteer for the overtime duty and the technician with the lowest number of overtime hours must be given the assignment – under what is known as overtime equalization.

37. Mr. Lawson does not have the authority to hire, fire, or promote technicians, determine their pay rates or benefits, or give raises. Mr. Lawson is unable to make other personnel decisions.

38. Mr. Lawson does not have the authority to decide whether or not a technician should be disciplined for an infraction or what the discipline will be. Disciplinary decisions are made by Mr. Lawson's superiors and/or dictated by strict company policies, including the technicians' collective bargaining agreement. Mr. Lawson's recommendations are given little, if any, weight.

39. Mr. Lawson performs required safety and quality inspections of technicians in the field using a pre-written checklist. These inspections do not involve

subjective assessments, but only discrete yes-or-no questions. Mr. Lawson has no role in writing or altering the checklists.

40. Mr. Lawson does not personally train technicians and does not determine what training they are to receive. Technicians receive their primary training from the Company's training center as well as online computer programs.

41. Mr. Lawson does not determine the tools and equipment to be used on the job. Materials are either provided directly by the company or Mr. Lawson is instructed from above what items to order from an outside supplier; he needs approval to do so and can only place orders within preset per item and per month limits.

42. Since approximately December 2007, Defendant has treated Mr. Lawson and all other similarly situated Level One Managers as exempt from the overtime requirements of the FLSA.

43. Mr. Lawson routinely works more than 8 hours a day and 40 hours per week for Defendant. Mr. Lawson regularly works 10 to 12 hour days at the Company, or more, as well as periodic weekend assignments.

44. In addition, Mr. Lawson is on rotating "duty," where he is on call once every several weeks for 24 hours a day for an entire seven day period. During his duty weeks, Mr. Lawson can be called into work at any time and frequently works weekends. Regardless of how many extra hours he is forced to work during his duty weeks, Mr. Lawson does not receive any additional pay for coming into work. Prior to being reclassified, Mr. Lawson received overtime pay for working duty.

45. On average, Mr. Lawson works at least 50 to 60 hours per week on a regular week and many hours more on duty weeks, including Saturdays and Sundays.

46. Defendant has misclassified Mr. Lawson and all other similarly situated Level One Managers as exempt, despite their performance of non-exempt duties.

47. Given Mr. Lawson's status as an "exempt" employee, Mr. Lawson no longer submits time sheets and BellSouth/AT&T's computer and payroll systems automatically record him as having worked a 40-hour week, regardless of his actual hours worked. BellSouth/AT&T does not compensate Mr. Lawson for hours over 40 that he works in a given week.

**B. Plaintiff Joe Tripodi**

48. Plaintiff Tripodi began working for BellSouth in 1998 as a service technician. Mr. Tripodi's position as a technician was classified as "non-exempt" by the company and thus Mr. Tripodi was paid overtime wages

49. Mr. Tripodi became a First Level Manager at BellSouth in or about November 2003, when he became an ADSL Manager in Lake Worth, Florida. He is currently assigned as a DLC Manager in Fort Pierce, Florida and has DLC digital techs assigned to him who perform installation and maintenance.

50. As a First Level Manager at BellSouth from 2003 to approximately December 2007, Mr. Tripodi was categorized as "non-exempt" by BellSouth (and later AT&T), and thus was paid overtime wages for a portion of the numerous hours he worked in excess of 40 during a given work week. In particular, Mr. Tripodi was compensated when he was specifically called in to work overtime or when he worked on-call "duty." However, Mr. Tripodi was routinely expected to work approximately 2 hours per day off-the-clock without any pay in order to complete his daily duties, primarily clerical tasks.

51. As of approximately December 2007, Defendant reclassified Mr. Tripodi and all similarly situated Level Ones as exempt and therefore no longer compensated them for on call duty or specifically-requested overtime. In addition to these hours, Mr. Tripodi and his peers are still expected to work approximately two hours or more without pay on a daily basis.

52. BellSouth/AT&T's decision to reclassify Mr. Tripodi and all Level Ones with crews of technicians as "exempt" and not entitled to overtime was announced suddenly in or about September 2007, effective that December. This reclassification had no legitimate basis, as neither Mr. Tripodi's nor any of the class members' job duties substantially changed after the AT&T purchase. Mr. Tripodi and all Level Ones in the plaintiff class have been performing the same basic duties as "AT&T Level Ones" that they performed as "BellSouth Level Ones." In fact, Mr. Tripodi and his peers have had less authority and discretion following the transition to AT&T and are more tightly controlled by the company.

53. Throughout the period from approximately November 2003 to the present, Mr. Tripodi has been a First Level Manager with a crew of technicians. His primary duties include: passing work to technicians, relaying information between the Company and the technicians, clerical tasks and paperwork, and performing safety and quality inspections (spot checks) with a detailed checklist provided by the Company.

54. In his role as a First Level, Mr. Tripodi does not exercise discretion or independent judgment. During the last several years, particularly following BellSouth's purchase by AT&T in 2006, Mr. Tripodi's "authority" has been even more severely cordoned.

55. Much of Mr. Tripodi's time at work is spent on basic clerical tasks.

56. Mr. Tripodi does not determine what work is to be done or on what time frame. Work assignments are generated by computer and are usually given to technicians by dispatch clerks. In certain instances, Mr. Tripodi assigns work to technicians from a pre-set bucket of jobs with established due dates; in doing so, he simply divides the work by the number of technicians on his team. Mr. Tripodi does not exercise significant judgment or discretion in performing these routine tasks.

57. When jobs require overtime hours, Mr. Tripodi does not have the authority to determine which technician will work the additional hours. Instead, technicians volunteer for the overtime duty and the technician with the lowest number of overtime hours must be given the assignment – under what is known as overtime equalization.

58. Mr. Tripodi does not have the authority to hire, fire, or promote technicians, determine their pay rates or benefits, or give raises. Mr. Tripodi is unable to make other personnel decisions.

59. Mr. Tripodi does not have the authority to decide whether or not a technician should be disciplined for an infraction or what the discipline will be. Disciplinary decisions are made by Mr. Tripodi's superiors and/or dictated by strict company policies, including the technicians' collective bargaining agreement. Mr. Tripodi's recommendations are given little, if any, weight.

60. Mr. Tripodi performs required safety and quality inspections of technicians in the field using a pre-written checklist. These inspections do not involve subjective assessments, but only discrete yes-or-no questions. Mr. Tripodi has no role in writing or altering the checklists.

61. Mr. Tripodi does not personally train technicians and does not determine what training they are to receive. Technicians receive their primary training from the Company's training center as well as online computer programs.

62. Mr. Tripodi does not determine the tools and equipment to be used on the job. Materials are either provided directly by the company or Mr. Tripodi is instructed from above what items to order from an outside supplier; he needs approval to do so and can only place orders within preset per item and per month limits. The approval process to order even basic items can go up four levels of management.

63. Since approximately December 2007, Defendant has treated Mr. Tripodi and all other similarly situated Level One Managers as exempt from the overtime requirements of the FLSA.

64. Mr. Tripodi routinely works more than 8 hours a day and 40 hours per week for Defendant. Mr. Tripodi regularly works 10 to 12 hour days at the Company, or more, as well as periodic weekend assignments.

65. In addition, Mr. Tripodi is on rotating "duty," where he is on call once every several weeks for 24 hours a day for an entire seven day period. During his duty weeks, Mr. Tripodi can be called into work at any time and frequently works weekends. Regardless of how many extra hours he is forced to work during his duty weeks, Mr. Tripodi does not receive any additional pay for coming into work. Prior to being reclassified, Mr. Tripodi received overtime pay for working duty.

66. On average, Mr. Tripodi works at least 50 to 60 hours per week or more on a regular week and 60 to 70 hours per week or more on duty weeks, including Saturdays and Sundays.

67. Defendant has misclassified Mr. Tripodi and all other similarly situated Level One Managers as exempt, despite their performance of non-exempt duties.

68. Given Mr. Tripodi's status as an "exempt" employee, Mr. Tripodi no longer submits time sheets and BellSouth/AT&T's computer and payroll systems automatically record him as having worked a 40-hour week, regardless of his actual hours worked. BellSouth/AT&T does not compensate Mr. Tripodi for hours over 40 that he works in a given week.

**C. Plaintiff Tom Whittington**

69. Plaintiff Whittington worked for BellSouth from 1973 to 1975. He began working for BellSouth again in 1977 as an Outside Plant Technician. Mr. Whittington's position as a technician was classified as "non-exempt" by the company and thus Mr. Whittington was paid overtime wages.

70. Mr. Whittington became a First Level Manager at BellSouth in or about 1996, when he became a line crew manager in Fort Pierce, Florida. He is currently assigned as a line crew manager in Vero Beach, Florida and has line crew techs assigned to him whose primary duties entail splicing, placing, and removing cables.

71. As a First Level Manager at BellSouth from 1996 to approximately December 2007, Mr. Whittington was categorized as "non-exempt" by BellSouth (and later AT&T), and thus was paid overtime wages for a portion of the numerous hours he worked in excess of 40 during a given work week. In particular, Mr. Whittington was compensated when he was specifically called in to work overtime or when he worked on-call "duty." However, Mr. Whittington was routinely expected to work approximately 2 hours per day off-the-clock without any pay in order to complete his daily duties,

primarily clerical tasks.

72. As of approximately December 2007, Defendant reclassified Mr. Whittington and all similarly situated Level Ones as exempt and therefore no longer compensated them for on call duty or specifically-requested overtime. In addition to these hours, Mr. Whittington and his peers are still expected to work approximately two hours or more without pay on a daily basis.

73. BellSouth/AT&T's decision to reclassify Mr. Whittington and all Level Ones with crews of technicians as "exempt" and not entitled to overtime was announced suddenly in or about September 2007, effective that December. This reclassification had no legitimate basis, as neither Mr. Whittington's nor any of the class members' job duties substantially changed after the AT&T purchase. Mr. Whittington and all Level Ones in the plaintiff class have been performing the same basic duties as "AT&T Level Ones" that they performed as "BellSouth Level Ones." In fact, Mr. Whittington and his peers have had less authority and discretion following the transition to AT&T and are more tightly controlled by the company.

74. Throughout the period from approximately 1996 to the present, Mr. Whittington has been a First Level Manager with a crew of technicians. His primary duties include: passing work to technicians, relaying information between the Company and the technicians, clerical tasks and paperwork, and performing safety and quality inspections (spot checks) with a detailed checklist provided by the Company.

75. In his role as a First Level, Mr. Whittington does not exercise discretion or independent judgment. During the last several years, particularly following BellSouth's purchase by AT&T in 2006, Mr. Whittington's "authority" has been even more severely

cordoned.

76. Much of Mr. Whittington's time at work is spent on basic clerical tasks.

77. Mr. Whittington does not determine what work is to be done or on what time frame. In certain instances, Mr. Whittington assigns work to technicians from a pre-set bucket of jobs with established due dates; in doing so, he simply divides the work by the number of technicians on his team. Mr. Whittington does not exercise significant judgment or discretion in performing these routine tasks.

78. When jobs require overtime hours, Mr. Whittington does not have the authority to determine which technician will work the additional hours. Instead, technicians volunteer for the overtime duty and the technician with the lowest number of overtime hours must be given the assignment – under what is known as overtime equalization.

79. Mr. Whittington does not have the authority to hire, fire, or promote technicians, determine their pay rates or benefits, or give raises. Mr. Whittington is unable to make other personnel decisions.

80. Mr. Whittington does not have the authority to decide whether or not a technician should be disciplined for an infraction or what the discipline will be. Disciplinary decisions are made by Mr. Whittington's superiors and/or dictated by strict company policies, including the technicians' collective bargaining agreement. Mr. Whittington's recommendations are given little, if any, weight.

81. For example, like other class members, Mr. Whittington is required to "drop notes" for his technicians' disciplinary infractions, including absences and lateness. After three such notes, Mr. Whittington is required to contact his supervisor who will

determine how to proceed.

82. Mr. Whittington performs required safety and quality inspections of technicians in the field using a pre-written checklist. These inspections do not involve subjective assessments, but only discrete yes-or-no questions. Mr. Whittington has no role in writing or altering the checklists.

83. Mr. Whittington does not personally train technicians and does not determine what training they are to receive. Technicians receive their primary training from the Company's training center as well as online computer programs.

84. Mr. Whittington does not determine the tools and equipment to be used on the job. Materials are either provided directly by the company or Mr. Whittington is instructed from above what items to order from an outside supplier; he needs approval to do so and can only place orders within preset per item and per month limits. The approval process to order even basic items can go up four levels of management.

85. Since approximately December 2007, Defendant has treated Mr. Whittington and all other similarly situated Level One Managers as exempt from the overtime requirements of the FLSA.

86. Mr. Whittington routinely works more than 8 hours a day and 40 hours per week for Defendant. Mr. Whittington regularly works a minimum of 10 hours per day at the Company, as well as periodic weekend assignments.

87. In addition, Mr. Whittington is on rotating "duty," where he is on call once every several weeks for 24 hours a day for an entire seven day period. During his duty weeks, Mr. Whittington can be called into work at any time and frequently works weekends. Regardless of how many extra hours he is forced to work during his duty

weeks, Mr. Whittington does not receive any additional pay for coming into work. Prior to being reclassified, Mr. Whittington received overtime pay for working duty.

88. On average, Mr. Whittington works at least 50 hours per week or more on a regular week and 60 to 70 hours per week or more on duty weeks, including Saturdays and Sundays.

89. Defendant has misclassified Mr. Whittington and all other similarly situated Level One Managers as exempt, despite their performance of non-exempt duties.

90. Given Mr. Whittington's status as an "exempt" employee, Mr. Whittington no longer submits time sheets and BellSouth/AT&T's computer and payroll systems automatically record him as having worked a 40-hour week, regardless of his actual hours worked. BellSouth/AT&T does not compensate Mr. Whittington for hours over 40 that he works in a given week.

**D. Plaintiff Jason Phillips**

91. Plaintiff Phillips began working for BellSouth in 1990 as a service representative. In approximately 1992, he became a service technician working in the field. These positions were classified as "non-exempt" by the company and thus Mr. Phillips was paid overtime wages.

92. From approximately 1999 to 2001, Mr. Phillips was a school-to-work coordinator who recruited for BellSouth in local high schools in Belle Glade, Florida. He did not have direct reports.

93. Mr. Phillips became a First Level Manager at BellSouth in or about 2001, when he became a Network Manager in Lake Worth, Florida with a crew of service technicians. He is currently assigned as a DLC Manager in Stuart, Florida and has DLC

digital techs assigned to him who perform installation and maintenance. With the exception of a period of several months in 2007 when he was temporarily assigned to a staff position without direct reports, Mr. Phillips had a crew of techs assigned to him.

94. As a First Level Manager at BellSouth from 2001 to approximately December 2007 (excluding his stint as a staff manager), Mr. Phillips was categorized as “non-exempt” by BellSouth (and later AT&T), and thus was paid overtime wages for a portion of the numerous hours he worked in excess of 40 during a given work week. In particular, Mr. Phillips was compensated when he was specifically called in to work overtime or when he worked on-call “duty.” However, Mr. Phillips was routinely expected to work approximately 2 hours per day off-the-clock without any pay in order to complete his daily duties, primarily clerical tasks.

95. As of approximately December 2007, Defendant reclassified Mr. Phillips and all similarly situated Level Ones as exempt and therefore no longer compensated them for on call duty or specifically-requested overtime. In addition to these hours, Mr. Phillips and his peers are still expected to work approximately two hours or more without pay on a daily basis.

96. BellSouth/AT&T’s decision to reclassify Mr. Phillips and all Level Ones with crews of technicians as “exempt” and not entitled to overtime was announced suddenly in or about September 2007, effective that December. This reclassification had no legitimate basis, as neither Mr. Phillips’ nor any of the class members’ job duties substantially changed after the AT&T purchase. Mr. Phillips and all Level Ones in the plaintiff class have been performing the same basic duties as “AT&T Level Ones” that they performed as “BellSouth Level Ones.” In fact, Mr. Phillips and his peers have had

less authority and discretion following the transition to AT&T and are more tightly controlled by the company.

97. Throughout the period from approximately 2001 to March 2007 and approximately October 2007 to the present, Mr. Phillips has been a First Level Manager with a crew of technicians. His primary duties include: passing work to technicians, relaying information between the Company and the technicians, clerical tasks and paperwork, and performing safety and quality inspections (spot checks) with a detailed checklist provided by the Company.

98. In his role as a First Level, Mr. Phillips does not exercise discretion or independent judgment. During the last several years, particularly following BellSouth's purchase by AT&T in 2006, Mr. Phillips' "authority" has been even more severely cordoned.

99. Much of Mr. Phillips' time at work is spent on basic clerical tasks.

100. Mr. Phillips does not determine what work is to be done or on what time frame. Work assignments are generated by computer and are usually given to technicians by dispatch clerks. In certain instances, Mr. Phillips assigns work to technicians from a pre-set bucket of jobs with established due dates; in doing so, he simply divides the work by the number of technicians on his team. Mr. Phillips does not exercise significant judgment or discretion in performing these routine tasks.

101. When jobs require overtime hours, Mr. Phillips does not have the authority to determine which technician will work the additional hours. Instead, technicians volunteer for the overtime duty and the technician with the lowest number of overtime hours must be given the assignment – under what is known as overtime

equalization.

102. Mr. Phillips does not have the authority to hire, fire, or promote technicians, determine their pay rates or benefits, or give raises. Mr. Phillips is unable to make other personnel decisions.

103. Mr. Phillips does not have the authority to decide whether or not a technician should be disciplined for an infraction or what the discipline will be. Disciplinary decisions are made by Mr. Phillips' superiors and/or dictated by strict company policies, including the technicians' collective bargaining agreement. Mr. Phillips' recommendations are given little, if any, weight.

104. Mr. Phillips performs required safety and quality inspections of technicians in the field using a pre-written checklist. These inspections do not involve subjective assessments, but only discrete yes-or-no questions. Mr. Phillips has no role in writing or altering the checklists.

105. Mr. Phillips does not personally train technicians and does not determine what training they are to receive. Technicians receive their primary training from the Company's training center as well as online computer programs.

106. Mr. Phillips does not determine the tools and equipment to be used on the job. Materials are either provided directly by the company or Mr. Phillips is instructed from above what items to order from an outside supplier; he needs approval to do so and can only place orders within preset per item and per month limits. The approval process to order even basic items can go up four levels of management.

107. Since approximately December 2007, Defendant has treated Mr. Phillips and all other similarly situated Level One Managers as exempt from the overtime

requirements of the FLSA.

108. Mr. Phillips routinely works more than 8 hours a day and 40 hours per week for Defendant. Mr. Phillips regularly works a minimum of 10 hours per day at the Company, as well as periodic weekend assignments.

109. In addition, Mr. Phillips is on rotating “duty,” where he is on call once every several weeks for 24 hours a day for an entire seven day period. During his duty weeks, Mr. Phillips can be called into work at any time and frequently works weekends. Regardless of how many extra hours he is forced to work during his duty weeks, Mr. Phillips does not receive any additional pay for coming into work. Prior to being reclassified, Mr. Phillips received overtime pay for working duty.

110. On average, Mr. Phillips works at least 50 per week or more on a regular week and 70 hours per week or more on duty weeks, including Saturdays and Sundays.

111. Defendant has misclassified Mr. Phillips and all other similarly situated Level One Managers as exempt, despite their performance of non-exempt duties.

112. Given Mr. Phillips’ status as an “exempt” employee, Mr. Phillips no longer submits time sheets and BellSouth/AT&T’s computer and payroll systems automatically record him as having worked a 40-hour week, regardless of his actual hours worked. BellSouth/AT&T does not compensate Mr. Phillips for hours over 40 that he works in a given week.

**E. Plaintiff Brad Sills**

113. Plaintiff Sills began working for BellSouth in 1989 as a service representative. He then worked as an Outside Plant Technician, facility technician, and electronic technician. These positions were classified as “non-exempt” by the company

and thus Mr. Sills was paid overtime wages.

114. Mr. Sills became a First Level Manager at BellSouth in or about 2000, when he became a Construction foreman with a line crew in Stuart, Florida. With the exception of a period in or about 2005 when he was a Plant Contract Specialist without direct reports, Mr. Sills held this position continuously until July 2009. As a Construction manager, Mr. Sills had line crew techs assigned to him whose primary duties entailed splicing, placing, and removing cables.

115. As a First Level manager at BellSouth from 2000 to approximately July 2009 (excluding his stint as a Plant Contract Specialist), Mr. Sills was categorized as “non-exempt” by BellSouth (and later AT&T), and thus was paid overtime wages for a portion of the numerous hours he worked in excess of 40 during a given work week. In particular, Mr. Sills was compensated when he was specifically called in to work overtime or when he worked on-call “duty.” However, Mr. Sills was routinely expected to work approximately 2 hours per day off-the-clock without any pay in order to complete his daily duties, primarily clerical tasks.

116. As of approximately December 2007, Defendant reclassified Mr. Sills and all similarly situated Level Ones as exempt and therefore no longer compensated them for on call duty or specifically-requested overtime. In addition to these hours, Mr. Sills and his peers were still expected to work approximately two hours or more without pay on a daily basis.

117. BellSouth/AT&T’s decision to reclassify Mr. Sills and all Level Ones with crews of technicians as “exempt” and not entitled to overtime was announced suddenly in or about September 2007, effective that December. This reclassification had no

legitimate basis, as neither Mr. Sills' nor any of the class members' job duties substantially changed after the AT&T purchase. Mr. Sills and all Level Ones in the plaintiff class have been performing the same basic duties as "AT&T Level Ones" that they performed as "BellSouth Level Ones." In fact, Mr. Sills and his peers have had less authority and discretion following the transition to AT&T and are more tightly controlled by the company.

118. Throughout the period from approximately 2000 to July 2009, with the exception of a period where he was transferred to a position as a Plant Contract Specialist, Mr. Sills has been a First Level Manager with a crew of technicians. His primary duties include: passing work to technicians, relaying information between the Company and the technicians, clerical tasks and paperwork, and performing safety and quality inspections (spot checks) with a detailed checklist provided by the Company.

119. In his role as a First Level, Mr. Sills did not exercise discretion or independent judgment. During the last several years, particularly following BellSouth's purchase by AT&T in 2006, Mr. Sills' "authority" was even more severely cordoned.

120. Much of Mr. Sills' time at work was spent on basic clerical tasks.

121. Mr. Sills did not determine what work is to be done or on what time frame. In certain instances, Mr. Sills assigned work to technicians from a pre-set bucket of jobs with established due dates; in doing so, he simply divided the work by the number of technicians on his team. Mr. Sills did not exercise significant judgment or discretion in performing these routine tasks.

122. When jobs required overtime hours, Mr. Sills did not have the authority to determine which technician would work the additional hours. Instead, technicians

volunteered for the overtime duty and the technician with the lowest number of overtime hours had to be given the assignment – under what is known as overtime equalization.

123. Mr. Sills did not have the authority to hire, fire, or promote technicians, determine their pay rates or benefits, or give raises. Mr. Sills was unable to make other personnel decisions.

124. Mr. Sills did not have the authority to decide whether or not a technician should be disciplined for an infraction or what the discipline would be. Disciplinary decisions were made by Mr. Sills' superiors and/or dictated by strict company policies, including the technicians' collective bargaining agreement. Mr. Sills' recommendations were given little, if any, weight.

125. Mr. Sills performed required safety and quality inspections of technicians in the field using a pre-written checklist. These inspections did not involve subjective assessments, but only discrete yes-or-no questions. Mr. Sills had no role in writing or altering the checklists.

126. Mr. Sills did not personally train technicians and does not determine what training they are to receive. Technicians receive their primary training from the Company's training center as well as online computer programs.

127. Mr. Sills did not determine the tools and equipment to be used on the job. Materials were either provided directly by the company or Mr. Sills was instructed from above what items to order from an outside supplier; he needed approval to do so and could only place orders within preset per item and per month limits. The approval process to order even basic items could go up four levels of management.

128. Since approximately December 2007, Defendant has treated Mr. Sills and

all other similarly situated Level One Managers as exempt from the overtime requirements of the FLSA.

129. As a Level One, Mr. Sills routinely worked more than 8 hours a day and more than 40 hours per week for Defendant. Mr. Sills regularly worked a minimum of 10 hours per day at the Company, as well as periodic weekend assignments.

130. In addition, Mr. Sills was on rotating “duty,” where he was on call once every several weeks for 24 hours a day for an entire seven day period. During his duty weeks, Mr. Sills could be called into work at any time and frequently worked weekends. Regardless of how many extra hours he was forced to work during his duty weeks, Mr. Sills did not receive any additional pay for coming into work. Prior to being reclassified, Mr. Sills received overtime pay for working duty.

131. On average, Mr. Sills worked at least 50-55 hours per week or more on a regular week and an additional 10-30 hours per week or more on duty weeks, including Saturdays and Sundays.

132. Defendant has misclassified Mr. Sills and all other similarly situated Level One Managers as exempt, despite their performance of non-exempt duties.

133. Given Mr. Sills’ status as an “exempt” employee as of approximately December 2007, Mr. Sills no longer submitted time sheets and BellSouth/AT&T’s computer and payroll systems automatically recorded him as having worked a 40-hour week, regardless of his actual hours worked. As a Level One, BellSouth/AT&T did not compensate Mr. Sills for hours over 40 that he worked in a given week.

## V. CLASS-WIDE FACTUAL ALLEGATIONS

### A. Plaintiffs and the class members are “managers” in name only

134. Although Plaintiffs and the class members are called “Managers,” they do not have managerial duties or authority and are essentially managers in name only. Plaintiffs and the class members are considered little more than worker bees – glorified clerks who are informed of policies and decisions passed down by the Company only a few minutes before their general announcement to the technicians or the public. It is widely acknowledged at BellSouth/AT&T that management actually starts at Second Level or above.

135. During Plaintiffs’ long tenure at BellSouth/AT&T, these truths have become even more pronounced as the class members’ jobs have become progressively more controlled and micromanaged, their supervisory authority slashed, and their duties increasingly more clerical. In particular, following BellSouth’s purchase by AT&T in 2006, the class members’ duties have been standardized across departments and regions and any autonomy and discretion they may have had has been virtually eliminated.

136. Over the relevant class period, from December 2006 to the present, the class members have essentially acted as paper pushers and functionaries, following the dictates of the Company.

137. At the same time, Defendant has continually reduced the benefits and perks of the class members’ so-called “managerial” positions – for example: scaling back on medical benefits and eliminating “duty pay.” It is now widely acknowledged that BellSouth/AT&T technicians – the class members’ supposed subordinates – commonly out-earn the Level Ones and have superior benefits.

138. Although Plaintiffs and the class members have the job duties and responsibilities of workers or “foot soldiers” of the Company, Defendant attempts to characterize them as management for purposes of federal overtime laws.

**B. Plaintiffs and the class members perform routine, standardized duties**

139. Regardless of the department or area in which they work, Plaintiffs and the class members perform the same basic functions each day: relaying company policies and directives to the technicians, handing out pre-determined work schedules, checking and filing time sheets and other paperwork, performing clerical tasks, and conducting routine safety and quality inspections from a checklist provided by the company.

140. Plaintiffs and the class members essentially act as a liaison between management and the technicians and, given the constraints placed upon them by company policy and by their bosses, do not perform in a traditional supervisory role.

141. The primary difference between the work performed in different departments or sub-units is at the technician level. Plaintiffs and the class members do not need technical expertise or experience in the areas to which they are assigned and can easily be shifted between different Level One positions.

142. Defendant is in the process of implementing a new module called MSOC (Management Systems Operating Control), which consummates the long-standing process of standardizing the class members’ jobs. MSOC is a micro-managing tool detailing each step of a First Level’s job by providing forms, guidelines, and timeframes. MSOC mandates that each class member performs a particular job function at a certain time of the day. It is designed so that all First Levels perform the job in exactly the same way and are virtually interchangeable.

**C. Plaintiffs and the class members do not exercise discretion or independent judgment as to matters of significance**

143. Plaintiffs' and the class members' duties do not require the exercise of discretion or independent judgment on any than more than an occasional basis. Plaintiffs and the class members have severely cordoned, if any, decision-making authority and none in matters of significance.

144. Plaintiffs' and the class members' duties do not include an opportunity to exercise experience and judgment in selecting alternative options.

145. Plaintiffs' and the class members' duties do not include an opportunity for independent choice free from immediate supervision.

146. Plaintiff's duties do not include an exercise of final authority.

147. In fact, Plaintiffs and the class members have virtually no independent authority in matters of even limited import. For example, Plaintiff Tripodi was told that he could not order small items like pencils and screwdrivers without express approval.

**D. Plaintiffs and the class members have no authority over hiring, firing, discipline, and other personnel decisions involving their technicians**

148. Plaintiffs and the class members are not responsible for employment or personnel decisions or policies. They have no authority over hiring, firing, advancement, promotion, setting pay rates or benefits, or granting pay raises or any other change of employee status. Nor do they have the weight of authority necessary to influence these matters in a substantial manner. They have no role in determining staffing levels, do not are not present at employee interviews, and do not select technicians for their teams.

149. Plaintiffs and the class members have a strictly limited role in disciplining technicians and are rarely able to do anything without authorization or express direction

from their supervisors. All disciplinary decisions are made by Plaintiffs' and the class members' supervisors and/or dictated by Company policy – including the technicians' collective bargaining agreement – from which they are not permitted to deviate.

150. Plaintiffs and the class members do not determine whether to discipline a technician and to what extent. Their wishes and recommendations regarding appropriate disciplinary measures are rarely elicited and commonly disregarded. Essentially, their role in a given disciplinary situation is to relate what happened to their superiors without any influence over what the result will be.

151. Acting on their own initiative, Plaintiffs' and the class members' supervisors will frequently instruct Plaintiffs and the class members to commence specific discipline against particular technicians.

**E. Plaintiffs and the class members primarily or exclusively perform non-exempt duties**

152. Plaintiffs' and the class members' primary duties do not include the management of the enterprises in which they are employed or that of a customarily recognized department within such enterprise.

153. Plaintiffs and the class members do not have input into Company strategy or business decisions. Nor do they have any role in financial or marketing decisions. Company policies are dictated by upper management.

154. Plaintiffs' and the class members' duties do not allow them to customarily and regularly direct the work of others. While ostensibly acting in a supervisory role over their teams of technicians, Plaintiffs and the class members are unable to exercise supervisory authority without approval from their managers and serve in a primarily clerical function.

155. Plaintiffs and the class members do not plan or direct the work of their technicians or determine techniques to be used on the job. Most Level Ones have no role in distributing or assigning work to the technicians, and merely hand out pre-determined assignments each day. If a technician will be out for the day, Level Ones call the dispatch center which reshuffles the work without their input.

156. First Levels in certain positions receive a pre-set bucket of work assignments with established due dates, and simply divide the work by the number of technicians on their teams. Other First Levels have some role in reshuffling the Company's pre-assigned work schedules as needed. Level Ones do not exercise significant judgment or discretion in performing these routine tasks.

157. Plaintiffs and the class members have a limited role in evaluating their technicians' performance and productivity. Technicians' performance and productivity are determined by Company metrics in which the class members have no input, and are calculated by a computer program which generates the results. Based on this information, the class members are often directly instructed by their supervisors to speak to particular technicians or initiate specific discipline.

158. Any discipline that Plaintiffs and the class members do institute, even measures approved by their supervisors, may be reversed from above without explanation – undermining any authority they have with their technicians.

159. Plaintiffs and the class members have no authority over their technicians' work hours, which are set by the collective bargaining agreement and/or by the Company. Plaintiffs and the class members do not determine when overtime is available, nor do they select which technicians will work overtime. Upon the Company's directive,

overtime is either freely available at the technicians' discretion, or the class members proceed down a prescribed list (by least to most overtime worked that year) until they have enough technicians who agree to work the required overtime.

160. Plaintiffs and the class members do not handle employee complaints and grievances. Level Ones may be present at the first step of the grievance process, but it is commonly-understood practice that nothing is resolved at the initial stage. Following this stage, Plaintiffs and the class members have no role in the grievance process and do not make any related decisions. They must follow the decisions made by their superiors.

161. Plaintiffs and the class members do not decide which types of merchandise, materials, supplies, machinery, or tools are to be used on the job and do not control the flow and distribution of these items. Plaintiffs and the class members are able to submit internal Company web forms in order to have pre-approved items restocked from a warehouse and are sometimes able to order "minor" tools, such as screwdrivers. They need approval and authority from their supervisors to order items which are not on pre-approved lists, are considered anything other than "minor," or are beyond preset per item or per month spending limits.

162. Plaintiffs and the class members do not have a distinct role in training their technicians. Instead, technicians are required by the Company to take specific on-line training courses and classes from designated trainers at the training center, and also receive peer-to-peer training in the field from other technicians. Plaintiffs and the class members do not determine what training their technicians will receive, but are directed by the Company to send their technicians to particular courses at particular times.

163. Some class members assist with conducting field training when new

technicians join their crew. This is no different than the peer-to-peer training given by experienced technicians. In general, if a class member observes a technician using an incorrect technique, he or she will instruct the technician to use the proper, Company-taught method – as would another technician witnessing the same error. Many Level Ones do not have a technical background or experience, which are not required for the job, and do not provide training.

164. Plaintiffs and the class members have no role in formulating Company safety guidelines, policies, or procedures, which are set by management and/or the safety department. Level One Managers and their technicians receive detailed and specific safety training from the Company. Plaintiffs and the class members also relay Company safety directives and notices to their technicians in short meetings, or “tailgates.”

165. Plaintiffs and the class members perform routine safety inspections (a designated number per tech per month) with a point-by-point checklist, and are instructed by the Company as to how to check each item. Determining whether a technician is in compliance does not require the exercise of subjective, much less independent, judgment. Most of the items on the checklist are as simple as checking off whether or not a technician is wearing a hard hat [yes/no], goggles [yes/no], and vest [yes/no].

166. Some First Levels also occasionally perform routine “investigations” of customer complaints and/or property damage. Plaintiffs and the class members do not arrive at their own opinions and conclusions as to whether a technician is responsible or what the outcome should be, but simply record the statements of any witnesses and pass along a “report” to their managers or to a designated department.

167. Plaintiffs and the class members customarily and regularly perform:

- a. non-exempt work, similar in nature to that performed by subordinates;
- b. production work, which although unlike the work performed by subordinates, is not part of a supervisory function;
- c. routine clerical duties;
- d. routine maintenance work.

**F. Plaintiffs and the class members all work excessive hours without additional compensation**

168. Plaintiffs and the class members are paid a salary on the basis of a 40 hour week. Plaintiffs and the class members do not keep time sheets and are automatically recorded as having worked a 40 hour week.

169. Plaintiffs and the class members are not paid any additional compensation or overtime for hours over 40 that they work in a given week.

170. Plaintiff and the class members work in excess of 40 hours per week on a regular, weekly basis. Level One Managers typically work a minimum of 45 hours per week and may work a range of approximately 50-70 hours per week.

171. On their “duty” weeks, approximately once every four to six weeks for a typical class member, Plaintiffs and the class members are tied to their cell phones and liable to be called at any time, day or night, for seven days in a row (168 hours). They are unable to make outside plans, and work unlimited hours depending on how busy things are that week – heavily influenced by weather and other emergency conditions.

172. In a common situation, a class member will be called at home or two or three in the morning and asked to go down the overtime list and – proceeding according to the Company’s overtime rules – find a technician to come out to work on an emergency job. Plaintiffs and the class members are required to be present at the work

site until the job is completed. Company guidelines and policies dictate the number of technicians to be called in and the procedures to be followed in given situations.

173. An especially “light” duty week involves several additional hours of work beyond the class members’ normal hours, an average scenario may require 20 extra hours or more, and heavy activity may push a Level One’s total working hours for the week to upwards of 80 hours. Until their reclassification as “exempt” in or about December 2007, Plaintiffs and the class members received overtime pay for the additional hours they worked while on duty. They no longer receive any compensation for these hours.

174. During the long hours they put in at BellSouth/AT&T, the class members are expected to constantly be working. At no time during their long workdays does Defendant allow Level Ones to take uninterrupted meal breaks or other rest breaks. They are expected to be available and to perform work during any lunch breaks and other breaks they take during the day.

## **VI. COLLECTIVE ACTION ALLEGATIONS UNDER THE FLSA**

175. Since approximately December 2007, Defendant BellSouth has misclassified non-exempt Level Ones with crews of techs as salaried exempt employees.

176. Prior to December 2007, Defendant BellSouth had an unwritten policy and expectation that its Level Ones with crews of techs – which it then properly classified as non-exempt – routinely work off-the-clock on a daily basis.

177. Defendants has intentionally and repeatedly engaged in practices of (1) requiring Level Ones to work off-the-clock without compensation, prior to approximately December 2007; and (2) beginning in approximately December 2007, improperly misclassifying non-exempt Level Ones as salaried exempt employees.

178. Plaintiffs bring their off-the-clock claim on behalf of the following category of similarly-situated individuals who worked for Defendant at any time from three years prior to the filing of this Complaint to entry of judgment in this case:

All First Level (or Level One Managers) employed by BellSouth from December 2006 and thereafter who were assigned technicians as direct reports and who were classified by the company as non-exempt employees under the FLSA.

179. Plaintiffs bring their misclassification claim on behalf of the following category of similarly-situated individuals who worked for Defendant at any time from three years prior to the filing of this Complaint to entry of judgment in this case:

All First Level (or Level One Managers) employed by BellSouth from December 2006 and thereafter who were assigned technicians as direct reports and who were classified by the company as exempt employees under the FLSA.

180. Defendant is liable under the FLSA for failing to properly compensate Plaintiffs, and as such, notice should be sent to past and present Level Ones. There are numerous (more than 1,000) similarly-situated current and former First Levels with crews of technicians who have been forced to work off-the-clock without compensation and/or misclassified in violation of the FLSA. Each of these employees who would benefit from the issuance of a court supervised Notice of the present lawsuit and the opportunity to join this action. Those similarly situated employees are known to Defendant, are readily identifiable, and can be located through Defendant's records.

**FIRST CLAIM FOR RELIEF (FLSA)**  
**FAILURE TO PAY REQUIRED OVERTIME AND**  
**KEEP ACCURATE RECORDS**  
**(29 U.S.C. §§ 207 and 211(c))**  
**OFF-THE-CLOCK**

159. Plaintiffs allege and incorporate by reference the preceding paragraphs of this complaint as if fully alleged herein.

160. At all relevant times, Defendant has been and continue to be an “employer” engaged in interstate “commerce” within the meaning of the FLSA, 29 U.S.C. § 203. At all relevant times, BellSouth/AT&T has employed and continues to employ First Level Managers as “employee[s]” within the meaning of the FLSA. At all relevant times, Defendant has had gross operating revenues far in excess of \$500,000.

161. Because Defendant willfully violated the FLSA by requiring Plaintiff and the class members to work off-the-clock without compensation, a three-year statute of limitations applies to such violations, pursuant to 29 U.S.C. § 255.

162. BellSouth/AT&T has willfully and intentionally engaged in a widespread pattern and practice of violating the provisions of the FLSA, as detailed herein, by requiring Plaintiffs and similarly-situated First Level Managers to work overtime off-the-clock and thereby failing and refusing to pay them the proper hourly wage compensation in accordance with § 206 and § 207 of the FLSA.

163. As a result of Defendant’s violations of the FLSA, Plaintiffs, as well as all others similarly situated, have suffered damages by being denied overtime wages in accordance with § 206 and § 207 of the FLSA.

164. Defendant has not made a good faith effort to comply with the FLSA with respect to its compensation of Plaintiffs and other similarly situated present and former First Level Managers.

165. At all relevant times, Defendant willfully, regularly, and repeatedly failed and continue to fail to make, keep, and preserve accurate time records required by the FLSA, 29 U.S.C. § 211(c), with respect to its Level Ones. Through this course of conduct, Defendants have deprived Plaintiffs and the Class Members of the records

necessary to calculate with precision the overtime compensation due to them.

166. As a result of Defendant's unlawful acts, Plaintiffs and all similarly situated current and former First Level Managers have been deprived of overtime compensation in amounts to be determined at trial, and are accordingly entitled to recovery of such amounts, liquidated (double) damages, prejudgment interest, attorneys' fees, costs, and other compensation pursuant to 29 U.S.C. § 216(b) as well as any other legal and equitable relief the Court deems just and proper.

**SECOND CLAIM FOR RELIEF (FLSA)**  
**FAILURE TO PAY REQUIRED OVERTIME AND**  
**KEEP ACCURATE RECORDS**  
**(29 U.S.C. §§ 207 and 211(c))**  
**MISCLASSIFICATION**

167. Plaintiffs allege and incorporate by reference the preceding paragraphs of this complaint as if fully alleged herein.

168. Because Defendant willfully violated the FLSA by misclassifying Plaintiffs as exempt employees, a three-year statute of limitations applies to such violations, pursuant to 29 U.S.C. § 255.

169. BellSouth/AT&T has willfully and intentionally engaged in a widespread pattern and practice of violating the provisions of the FLSA, as detailed herein, by misclassifying Plaintiffs and similarly-situated First Level Managers as "exempt" employees, and thereby failing and refusing to pay them the proper hourly wage compensation in accordance with § 206 and § 207 of the FLSA.

170. Plaintiffs and the class members are not employed in a "bona fide executive, administrative, or professional capacity" pursuant to 29 U.S.C. § 213(a)(1) and corresponding regulations. Plaintiffs and the class members are not subject to any other

exemptions set forth in the FLSA or administrative regulations.

171. As a result of Defendant's violations of the FLSA, Plaintiffs, as well as all others similarly situated, have suffered damages by being denied overtime wages in accordance with § 206 and § 207 of the FLSA.

172. Defendant has not made a good faith effort to comply with the FLSA with respect to its compensation of Plaintiffs and other similarly situated present and former First Level Managers.

173. At all relevant times, Defendant willfully, regularly, and repeatedly failed and continues to fail to make, keep, and preserve accurate time records required by the FLSA, 29 U.S.C. § 211(c), with respect to its Level Ones. Through this course of conduct, Defendant has deprived Plaintiffs and the Class Members of the records necessary to calculate with precision the overtime compensation due to them.

174. As a result of Defendant's unlawful acts, Plaintiffs and all similarly situated current and former First Level Managers have been deprived of overtime compensation in amounts to be determined at trial, and are accordingly entitled to recovery of such amounts, liquidated (double) damages, prejudgment interest, attorneys' fees, costs, and other compensation pursuant to 29 U.S.C. § 216(b) as well as any other legal and equitable relief the Court deems just and proper.

#### **PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiffs, individually and on behalf of all other similarly-situated persons, pray for the following relief:

- A. That the Court determine that this action may be maintained as a collective action under 29 U.S.C. § 216(b) and as a class action under the Federal

Rules of Civil Procedure Rule 23;

- B. That, at the earliest possible time, Plaintiffs be allowed to give notice of this collective action, or that the court issue such notice, to all persons who are presently, or have been at any time during the three years immediately preceding the filing of this suit, up through and including the date of the Court's issuance of Court-supervised Notice, been employed by BellSouth as a Level One Manager assigned technicians as direct reports. Such persons shall be informed that this civil action has been filed, of the nature of the action, and of their right to join this lawsuit if they believe they were (1) forced to work off-the-clock without compensation and/or (2) misclassified as exempt employees, whereas their primary work duties entail tasks commonly performed by non-exempt, hourly employees.
- C. That the Court find that BellSouth/AT&T has violated the overtime provisions of the FLSA, 29 U.S.C. § 207 as to Plaintiffs and the Class;
- D. That the Court find that BellSouth/AT&T has violated the record-keeping provisions of the FLSA, 29 U.S.C. § 211(c) as to Plaintiffs and the Class;
- E. That the Court find that BellSouth/AT&T's wage and hour violations as described have been willful;
- F. That the Court award to Plaintiffs and the Plaintiff Class compensatory and liquidated damages in excess of \$500 million for unpaid overtime compensation, including interest, and statutory penalties subject to proof at trial pursuant to 29 U.S.C. § 201 *et seq.* and the supporting United States Department of Labor regulations;

- G. That the Court enjoin Defendant to cease and desist from its violations of the FLSA described herein and to comply with the FLSA;
- H. That Plaintiffs and the Class be awarded reasonable attorneys' fees and costs pursuant to FLSA 29 U.S.C. § 216(b) and/or other applicable law; and
- I. That the Court award such other and further relief as this Court may deem appropriate.

**DEMAND FOR TRIAL BY JURY**

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiffs demand a trial by jury on all questions of fact raised by the complaint.

Dated: December 16, 2009

Respectfully submitted,

\_\_\_\_\_/s/Edward Buckley\_\_\_\_\_  
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