

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN**

WENDY A. ARRINGTON, a/k/a
WENDY A. HOLMES, for herself and those
similarly situated

Case No:

Plaintiffs,

**CLASS/COLLECTIVE ACTION;
COMPLAINT AND DEMAND
FOR JURY TRIAL**

-vs-

AT&T TELEHOLDINGS, INC., d/b/a AT&T
Midwest, a Delaware company, and MICHIGAN
BELL TELEPHONE COMPANY, d/b/a AT&T
Michigan, a Michigan corporation.

Defendants.

Named Plaintiff and proposed class representative, WENDY A. ARRINGTON, a/k/a
Wendy Holmes, by and through their attorneys, Harvey Kruse, P.C., for her Complaint against
Defendants, AT&T TELEHOLDINGS, INC., d/b/a AT&T Midwest and MICHIGAN BELL
TELEPHONE COMPANY, d/b/a AT&T Michigan, states as follows:

PRELIMINARY STATEMENT

1. This class/collective action is brought to recover for damages and injury
stemming from violations of the Fair Labor Standards Act of 1938, as amended, 29 USC. §201,
et seq (FLSA), and under the Michigan Minimum Wage Law of 1964, MCL 408.381, *et seq*
(MMWL). Plaintiff and the representative class are current and former First Level Managers,
a/k/a “Level One Managers” of Defendants that were misclassified as exempt and thus denied
overtime compensation they were entitled under the FLSA.

HARVEY KRUSE

ATTORNEYS & COUNSELORS
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JURISDICTION AND VENUE

2. The Eastern District of Michigan Court has federal question jurisdiction pursuant to 28 USC §1331 over the individual and representative claims raised herein, which claims arise under the laws of the United States, i.e. the FLSA, 29 USC §201, *et seq* and the Portal-to-Portal Act 29 USC § 251, *et seq*.

3. The district court has original jurisdiction over Plaintiffs' FLSA claims pursuant to § 16(b) of that Act, which states "an action to recover . . . may be maintained against any employer ... in any federal or state court of competent jurisdiction by any one or more employees for and in behalf of himself or themselves. . . ." 29 USC § 216(b).

4. The district court has jurisdiction pursuant to 28 USC § 1337 conferring jurisdiction of any civil action arising under any Act of Congress regulating interstate commerce. See 29 USC § 202.

5. The district court has jurisdiction pursuant to the Declaratory Judgment statute, 28 USC § 2201.

6. The Court has original jurisdiction over all state and federal law claims brought under Fed. R. Civ. P. 23 pursuant to 28 USC 1332(d), the Class Action Fairness Act of 2005, because plaintiff and one defendant are from different states and because the claims of the class as a whole exceed \$5,000,000, exclusive of interests and costs.

7. The Court has supplemental jurisdiction over all state law claims raised herein pursuant to 28 USC §1367 because such claims do not raise novel or complex issues of state law, and because these state law claims arise from a common nucleus of operative facts with the federal claims, i.e., the claims involve the same parties, arise out of the same unlawful pay practices and misrepresentations and involve the same issues of proof as to employee status and

misclassification, and are thus so related to the federal claims so as to form part of the same case or controversy under Article III of the United States Constitution.

8. Venue is proper in the Eastern District of Michigan under 28 USC §1391(b) because defendants reside, operate and/or are located in this district, and because a substantial part of the events or omissions giving rise to the FLSA wage and overtime claims raised herein occurred in this district.

PARTIES

9. Plaintiff Wendy Arrington is a citizen of the United States and is a resident of the State of Michigan. She has been employed by Defendants since 2001. She has held the job title of First Level Manager since 2005. Her situation is typical of a First Level Manager as set forth herein.

10. Defendant AT&T Teleholdings, Inc., d/b/a AT&T Midwest (“AT&T Midwest”), is a corporation formed pursuant to the laws of the State of Delaware doing business in the states of Michigan, Illinois, Indiana, Ohio and Wisconsin.

11. Defendant Michigan Bell Telephone Company, d/b/a AT&T Michigan (“Michigan Bell”), is a corporation formed pursuant to the laws of the State of Michigan, doing business in Michigan.

12. The class of plaintiffs, (hereinafter “class members”), are current and former employees of AT&T Midwest and Michigan Bell, employed as First Level Managers, who are similarly situated to the representative plaintiff, Wendy Arrington, as is set forth more fully below.

GENERAL ALLEGATIONS:
AT&T MIDWEST AND ITS BUSINESS OPERATIONS

13. AT&T Midwest is the AT&T, Inc., telecommunications arm that services the entire Midwest region. The other states that make up this region are Illinois, Indiana, Ohio and Wisconsin.

14. AT&T Midwest provides various communications services, including local and long-distance telephone, cellular, paging, security, cable TV, Internet access, and directory publishing services, including installation and repair of services, to millions of customers in Illinois, Indiana, Michigan, Ohio, and Wisconsin.

15. Upon information and belief, AT&T Midwest has more than 70,000 employees, and approximately 1,500 First Level Managers.

16. AT&T Midwest employs systemic, unlawful policies and practices of misclassifying its First Level Managers as exempt and thus denying them overtime wages due under the FLSA.

17. These unlawful policies and practices apply throughout the various states that constitute the Midwest region, i.e. Michigan, Illinois, Indiana, Ohio and Wisconsin.

18. AT&T Midwest is an employer of the named plaintiffs and class members within 29 U.S.C. §203(d).

19. AT&T Midwest is an employer of the named plaintiffs and class members within MCL 408.382.

20. AT&T Midwest is engaged in interstate commerce and/or is part of an "enterprise" engaged in interstate commerce or the production of goods for commerce, with gross volume of sales of not less than \$500,000 within 29 USC §207. See 29 U.S.C. §§203(r) and (s).

GENERAL ALLEGATIONS:
MICHIGAN BELL AND ITS BUSINESS OPERATIONS

21. Michigan Bell is a communications company, which provides local, long-distance telephone, cellular service, paging, security, cable TV, Internet access, and directory publishing services, including installation and repair of services. The Company is headquartered in Detroit, Michigan.

22. Upon information and belief, AT&T Midwest has more than 12,000 employees, and approximately 250 – 300 First Level Managers.

23. Michigan Bell employs systemic, unlawful policies and practices of misclassifying its First Level Managers as exempt and thus denying them overtime wages due under the FLSA.

24. These unlawful policies and practices to deprive First Level Managers overtime to which they are entitled under the FLSA are company-wide.

25. Michigan Bell is an employer of the named plaintiffs and class members within 29 U.S.C. §203(d).

26. Michigan Bell is an employer of the named plaintiffs and class members within MCL 408.382.

27. Michigan Bell is engaged in interstate commerce and/or is part of an "enterprise" engaged in interstate commerce or the production of goods for commerce, with gross volume of sales of more than \$500,000 within 29 USC §207. See 29 U.S.C. §§203(r) and (s).

GENERAL ALLEGATIONS: DUTIES AND RESPONSIBILITIES
OF PLAINTIFF AND FIRST LEVEL MANAGERS

28. Plaintiff and class members are current and former employees of defendants within 29 USC §203(e).

29. Plaintiff and class members are current and former employees of defendants within MCL 408.382(b).

30. Plaintiff and First Level Managers for defendants are the bottom level of a multitier company hierarchy which is not less than seven levels.

31. Plaintiff and First Level Managers for defendants serve in the various areas of air pressure, cable, O-9, large business, installation, repair, hi-cap/special services and U-verse. Plaintiff has worked as a First Level Manager in all of these company areas except AT&T U-verse.

32. Plaintiff and First Level Managers for defendants are assigned groups of technicians, who are bargaining unit employees who perform the physical and technical aspects of the particular job, working inside or out, at a commercial building or at a customer's residence.

33. Plaintiff and First Level Managers for defendants act as low-level functionaries, performing largely clerical task and relaying Company directives and policies to the technicians assigned to them.

34. Plaintiff and First Level Managers for defendants are managers in name only. They have little management responsibilities, and no authority to make or effect employment-related decisions, i.e., they do not hire or fire technicians and any suggestions from them, if considered, are not given particular weight.

35. Plaintiff and First Level Managers for defendants do not set pay rates, or determine pay raises.

36. Plaintiff and First Level Managers for defendants do not set work schedules. Overtime hours are determined by Company directive and a prescribed list that changes the call-in order based on the number of overtime hours worked to that point in time.

37. Plaintiff and First Level Managers for defendants do not award “promotions”, or determine who will “advance” in the company.

38. Plaintiff and First Level Managers for defendants do not determine staffing levels.

39. Plaintiff and First Level Managers for defendants are not present at employee interviews.

40. Plaintiff and First Level Managers for defendants do not select amongst technicians for their teams.

41. Plaintiff and First Level Managers for defendants have no authority to discipline the technicians on their teams. Even the most minor sanction would require prior authorization, or would have had to come from someone higher-up. Plaintiffs’ and class members’ supervisors and/or Company policy – including the technicians’ collective bargaining agreement – dictate what actions are to be disciplined, and how severely.

42. Whenever plaintiff and First Level Managers participate in some form of disciplinary action against a particular technician, it is only at the specific direction of their immediate supervisor, or someone else higher up in the company.

43. Plaintiff and First Level Managers for defendants do not handle employee grievances. They may on occasion attend an initial sit-down as to some low-level employee grievance, but even then they are strictly governed by established Company policy and procedure as to what is to be done. If the grievance continues on past that initial phase, First Level Managers have no further role.

44. Plaintiff and First Level Managers for defendants are assigned work. They are provided the completion times for the work that is assigned.

45. Plaintiff and First Level Managers for defendants are not permitted to formulate, affect, interpret, or implement management policies or operating practices.

46. Plaintiff and First Level Managers are not permitted to deviate from established policies and procedures without prior approval.

47. Plaintiff and First Level Managers for defendants do not assign technicians to work particular jobs. Job assignments and overtime hours are predetermined and handed down by a dispatch center.

48. Plaintiff and First Level Managers for defendants are themselves micromanaged and tightly controlled by Company policy and the supervisors above them.

49. Plaintiff and First Level Managers for defendants do not possess final authority as to any matter of any marginal import.

50. Plaintiff and First Level Managers for defendants are required to obtain authorization from their supervisors for even the most minor decisions.

51. Plaintiff and First Level Managers for defendants do not exercise discretion or independent judgment as to matters of significance.

52. Plaintiff and First Level Managers for defendants do not exercise judgment in selecting amongst alternative options.

53. Plaintiff and First Level Managers for defendants do not exercise independent choice that is free from immediate supervision

54. Plaintiff and First Level Managers for defendants perform routine, standardized duties. Safety and field inspections, for example, are done pursuant to detailed checklists, which

require nothing more from the First Level Manager than confirmation of a fact, which is indicated on the form with a checked box. For example, a First Level Manager might check “yes” in response to whether a technician is wearing his or her safety hat.

55. The job duties of plaintiff and First Level Managers does not directly relate to Company management policies or general business operations.

56. Plaintiff and First Level Managers for defendants are regularly required to work significant amounts of overtime, 50 to 60 hours per week, or more. Additionally, First Level Managers are assigned a predetermined number of “duty” weeks in each calendar year in which they are deemed to be on-call 24 hours a day, for the full seven day period. These duty weeks are assigned on a rotating basis. First Level Managers are called upon to work extra during their assigned duty weeks. In fact, it is not uncommon for plaintiff and First Level Managers to work in excess of 100 hours during duty week.

57. First Level Managers for defendants are also made to serve as backup to the individual that is assigned to duty week, effectively making other First Level Managers on-call for additional duty weeks.

58. Plaintiff and First Level Managers are paid a salary on the basis of a 40 hour work week.

59. The job duties of plaintiff and First Level Managers do not require any specialized knowledge, or knowledge of an advanced type. Differences between work performed in various departments or sub-units is at the technician level. First Level Managers are commonly shifted between different level one positions.

60. Plaintiff and First Level Managers for defendants do not regularly direct the work of the technicians on their teams. They can not act without prior approval from their supervisors.

Even when in the field with their teams, these First Level Managers are at most a set of eyes for the Company and a mouth piece to the higher-ups, which persons make decisions and establish company policies as to how the work is done.

61. Plaintiff and First Level Managers for defendants do not decide the merchandise, materials, supplies, machinery or tools for a particular job and do not control the flow or distribution of these items. Plaintiff 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.

62. Plaintiff and First Level Managers for defendants 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. Plaintiff and 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.

63. Some class members may 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 (who are paid overtime). 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 First Level Managers do not have a technical background or experience, which are not required for the job, and do not provide training.

64. Plaintiff 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.

65. Plaintiff and First Level Managers, as well as their technicians, receive detailed and specific safety training from the Company. First Level Managers may relay Company safety directives and notices to their technicians during short, pre-shift meetings, or "tailgates."

66. Employee performance is evaluated by productivity, which is tracked and calculated by the Company. Plaintiff and First Level Managers have no input. However, a First Level Manager may be instructed to then speak to a particular technician based on what the Company and its computer programs have determined.

67. The technicians assigned to First Level Managers are paid overtime wages and earn considerably more than their "supervisors".

68. Some class members may receive some form of compensated time off (CTO) for part of their overtime hours worked. CTO is not awarded pursuant to any written agreement. It is not awarded at a rate of 1 ½ times the overtime hours actually worked. First Level Managers do not determine when such CTO time is used, or have an option to redeem any CTO hours awarded for monetary compensation. First Level Managers continue to work well in excess of 40 hours per week, even in weeks where CTO time is awarded.

69. Plaintiff and First Level Managers occasionally perform routine "investigations" of customer complaints as to property damage. They do not, however, draw conclusions as to technician error, or decide the outcome. They simply record witness statements and pass along the information they have gathered in the form of a "report" to their managers, or designated department.

70. Plaintiff and First Level Managers customarily and regularly perform non-exempt work, similar in nature to that performed by technicians, or other types of field work that although unlike the work of the technicians is not supervisory in nature, or routine clerical duties, and/or routine maintenance work.

CLASS/COLLECTIVE ACTION
GENERAL ALLEGATIONS

71. The plaintiff's FLSA claims are maintainable as a collective action under 29 U.S.C. §216.

72. The MMWL and state law claims raised herein against defendants are properly maintainable as a class action under Federal Rule of Civil Procedure 23(a), and under any of (1), (2) or (3) of subsection (b) of the Rule.

73. Class Members are defined as:

All current and former employees of defendants who are now, or were employed during some or all of the last three years, as First Level Managers, a/k/a Level One Managers, who worked in excess of 40 hours per week and were classified by defendants as exempt employees under the FLSA.

74. Class members include 250-300 current and former employees employed in Michigan alone.

75. Plaintiff and class members are similarly situated within the meaning of 29 U.S.C. §216 in that they were all subjected to the same improper practice, common policy and/or plan to violate the federal wage laws.

76. The named plaintiff will fairly and adequately represent the interests of the class members because she is similarly situated to the class members, and because her claims are common to, concurrent with and typical of the claims of the class members to this lawsuit.

77. There are no conflicts of interest between the named plaintiff and the class of opt-in plaintiffs.

78. Class Counsel, Dale R. Burmeister, is qualified and able to litigate the Class Members' claims. Class Counsel has experience in class action litigation involving the prosecution and defense of class action and other representative litigation of various sorts, including violations of the FLSA and state labor laws. Class Counsel will further be assisted in this matter by attorneys in his law firm of Harvey Kruse, P.C, who likewise carry with them knowledge and experience in such matters.

79. Common questions of law and fact predominate in this action because the claims of all the class members have at their core the question as to whether defendants' failures to pay wages and/or overtime benefits to their nonexempt First Level Manager employees for work in excess of 40 hours per week violates the FLSA.

80. A class action is maintainable in this case under subsection (3) of Rule 23(b) because common questions of law and fact predominate among the class members and because the class action is superior to other methods for the fair and efficient adjudication of this controversy.

81. A collective action is maintainable in this case as to the FLSA claims under 29 U.S.C. §216(b), and also for all supplemental state law claims raised herein that form part of the same Article III case or controversy for those similarly situated individuals.

**COUNT I: FLSA – UNPAID OVERTIME AND
FAILURE TO MAINTAIN RECORDS**

82. Plaintiff incorporates paragraphs 1-81 above.

83. Plaintiff and class members regularly worked more than 40 hours per week during their employment with defendants as First Level Managers.

84. Plaintiff and class members were not and are not properly classified as "executive", "administrative", "professional", or any other exempt class of worker.

85. Defendants wrongly classified plaintiff and class members as exempt to avoid their obligations to pay overtime wages under the FLSA.

86. Defendants have not paid, and refuse to pay, plaintiff and class members, overtime compensation at a rate of one and one-half times their regular rate of pay for the hours they worked in excess of 40 per week in violation of 29 U.S.C. §207(a)(1).

87. Defendants failure to pay plaintiff and class members the overtime and/or other wages owed to them under the FLSA was and continues to be deliberate and willful.

88. Defendants did not act in good faith in failing to pay plaintiff and class members the overtime and other wages owed them under the FLSA, and did not have "reasonable grounds" to believe that their conduct in so doing was in accordance with the law.

89. Defendants have failed to keep and preserve time records as required by 29 USC 211(c) and have therefore deprived plaintiff and class members the records that would most easily prove the overtime hours worked and compensation due.

90. Pursuant to 29 U.S.C. §216, plaintiff and class members are entitled to recover for unpaid overtime compensation and/or other unpaid wages, plus an equal amount as liquidated damages and the reasonable attorneys' fees and costs of this suit.

WHEREFORE, Plaintiff, Wendy Arrington, demands judgment against defendants AT&T Teleholdings, Inc. and Michigan Bell Telephone Company in favor of her and class members for the following relief:

- (a) Certification pursuant to 29 USC 216(b) and Court approved notice to prospective opt-in class members;

- (b) A declaration from this Court as to the unlawful pay practices and policies discussed herein and an order restraining defendants from engaging in the aforementioned pay violations;
- (c) A determination of a violation of the FLSA and failure to pay overtime as required by 29 USC 207(a)(1), and an award of the value of plaintiff's and class members' unpaid overtime wages and other employee benefits over the last 2 years pursuant to 29 USC 255;
- (d) A determination of a willful violation and an award of the value of plaintiff's and class members' unpaid overtime wages and other employee benefits over the last 3 years pursuant to 29 USC 255;
- (e) An award of an equal amount of liquidated damages as provided under the section 216 of the FLSA;
- (f) An award of attorneys' fees and costs pursuant to section 216 of the FLSA, and/or other applicable law;
- (g) An award of pre and post judgment interest;
- (h) An award of such additional relief as this Court may deem appropriate.

**COUNT II: MMWL – UNPAID OVERTIME AND
FAILURE TO MAINTAIN RECORDS**

91. Plaintiff incorporates paragraphs 1 through 90 above.

92. Michigan Compiled Laws §408.383 provides:

No employer shall pay any employee at a rate of less than prescribed in this act

93. MCL §408.384a provides in part:

Compensation for overtime; exceptions; rules; unpaid minimum wages; appropriation; compensatory time in lieu of monetary overtime compensation.

Sec. 4a(1) Except as otherwise provided in this section, an employee shall receive compensation at not less than 1-1/2 times the regular rate at which the employee is employed for employment in a workweek in excess 40 hours.

94. MCL 408.393 provides in part:

Sec. 13. (1) If any employer violates this act, the employee affected by the violation, at any time within 3 years, may:

(a) Bring a civil action for the recovery of the difference between the amount paid and the amount that, but for the violation, would have been paid the employee under this act and an equal additional amount as liquidated damages together with costs and such reasonable attorney's fees as may be allowed by the court.

95. Plaintiff and class members regularly worked more than 40 hours per week during their employment with defendants as First Level Managers.

96. Plaintiff and class members were not and are not properly classified as "executive", "administrative", "professional", or any other exempt class of worker.

97. Defendants wrongly classified plaintiff and class members as exempt to avoid their obligations to pay overtime wages under the MMWL.

98. Defendants have not paid, and refuse to pay, plaintiff and class members, overtime compensation at a rate of one and one-half times their regular rate of pay for the hours they worked in excess of 40 per week in violation of MCL 408.384a.

99. Defendants have failed to keep and preserve time records as required by MCL 408.391 and have therefore deprived plaintiff and class members the records that would most easily prove the overtime hours worked and compensation due.

100. Pursuant to MCL 408.393, plaintiff and class members are entitled to recover for three years of unpaid overtime compensation and/or other unpaid wages, plus an equal amount as liquidated damages and the reasonable attorneys' fees and costs of this suit.

WHEREFORE, Plaintiff, Wendy Arrington, demands judgment against defendants AT&T Teleholdings, Inc. and Michigan Bell Telephone Company in favor of her and class

members for the following relief:

- (a) Certification pursuant to Rule 23 and Court approved notice to class members;
- (b) A declaration from this Court as to the unlawful pay practices and policies discussed herein and an order restraining defendants from engaging in the aforementioned pay violations;
- (c) An award of the value of plaintiff's and class members' unpaid overtime wages and other employee benefits over the last 3 years;
- (d) An award of an equal amount of liquidated damages as provided under the section 13 of the MMWL;
- (e) An award of attorneys' fees and costs pursuant to section 13 of the MMWL, and/or other applicable law;
- (f) An award of pre and post judgment interest;
- (g) An award of such additional relief as this Court may deem appropriate.

HARVEY KRUSE, P.C.

By: /s/ Dale R. Burmeister
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Dated: March 10, 2010

TRIAL BY JURY

Plaintiff further demands a trial by jury on her and class members' claims against Defendants.

HARVEY KRUSE, P.C.

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Dated: March 10, 2010