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09 DEC 16 AM 11:19  
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CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

EV 09

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16 JOE LEWIS LUQUE AND HERMAN  
17 RICHARDSON, Individually and On Behalf  
of All Others Similarly Situated,

No.  
CLASS AND COLLECTIVE ACTION  
COMPLAINT

18 Plaintiffs,

JURY TRIAL DEMANDED

19 v.

20 AT&T CORP., PACIFIC BELL  
21 TELEPHONE CO. d/b/a AT&T  
CALIFORNIA, AND AT&T  
22 COMMUNICATIONS OF CALIFORNIA,  
INC.,

23 Defendants.

25 Plaintiffs Joe Lewis Luque and Herman Richardson ("Plaintiffs" or "Class  
26 Representatives") are current and former First Level (or Level One) Managers of Defendants  
27 AT&T Corp., Pacific Bell Telephone Co. d/b/a AT&T California, and AT&T Communications of  
28 California, Inc. (collectively "Defendants," "PacBell," or "AT&T" unless otherwise specified).

1 Plaintiffs are also commonly referred to as Field Managers. Plaintiffs, individually and on behalf  
2 of all other similarly situated Field Managers (as defined below), complain by their attorneys  
3 Sanford Wittels & Heisler, LLP, Ram & Olson, LLP and the Law Office of Edmond Clark as  
4 follows:

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

6 1. An employer's obligation to pay its employees overtime wages is more than a  
7 matter of private concern between the parties. That obligation is founded on a compelling public  
8 policy judgment that members of a modern, humane society are not simply indentured servants  
9 but are entitled to work a livable number of hours at a livable wage. Minimum wage and overtime  
10 laws mark the boundary between a humane society and its Industrial Era precursor of child labor,  
11 company scrip, and eighteen-hour work days. In addition, the statutes and regulations compelling  
12 employers to pay overtime were designed not only to benefit individual workers but also to serve  
13 a fundamental societal goal: reducing unemployment by giving the employer a disincentive to  
14 concentrate work in a few overburdened hands and an incentive to instead hire additional  
15 employees. Especially in today's economic climate, the importance of spreading available work  
16 to reduce unemployment cannot be overestimated.

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

21 3. AT&T/PacBell employs a multi-tiered management structure with at least seven  
22 levels. Plaintiffs and the First Level Managers similarly situated to Plaintiffs, known in company  
23 parlance as "Field Managers,"<sup>1</sup> are at the bottom of the pyramid, acting as low-level functionaries  
24

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25 <sup>1</sup> The term Field Manager, although not an official company title, is a widely-used and  
26 commonly-understood term at AT&T/PacBell. It refers to the subset of First Level or Level One  
27 managers who have crews of technicians (or direct reports) assigned to them and whose  
28 technicians work out in the "field" performing tasks such as cable maintenance, cable repair,  
splicing, and installation. Although the titles used by the company frequently changed, the term  
Field Manager encompasses employees occupying current titles including, but not limited to,  
Network Manager; Network Manager, Operations; Network Services Manager; I&R (Installation  
and Repair) Manager; and I&M (Installation and Maintenance) Manager – as long as they had

1 whose essential role is to relay information back and forth between technicians – bargaining-unit  
2 employees – and management. Plaintiffs and the members of the proposed class have a minimal  
3 role in supervising their technicians and have no authority to make employment-related  
4 decisions. Furthermore, they are tightly controlled by Company policy and by their supervisors,  
5 do not exercise discretion or independent judgment as to matters of significance, and their job  
6 duties are not directly related to the Company's management policies or general business  
7 operations.

8 4. Nevertheless, Defendants' Field Managers are caught in a numbers crunch  
9 between AT&T/PacBell's richly compensated executives and bargaining-unit employees (who  
10 have generous benefits packages and, with overtime pay, frequently earn six-figure salaries).  
11 Determined to squeeze where they can, Defendants deliberately flout federal and state wage and  
12 hour protections in order to extract excessive and back-breaking hours from the company's small  
13 army of Field Managers. Defendants wrongfully and willfully misclassify these employees as  
14 exempt from overtime under these laws and therefore refuse to compensate them for hours over  
15 40 worked in any given week, much less provide the required time-and-a-half overtime pay.

16 5. In addition to their ordinary working hours (ranging from approximately 50 to 70  
17 hours per week), the Plaintiffs' and class members' overloaded work schedules include working  
18 from home to keep up with clerical tasks and frequent weekend tasks. Furthermore, they are  
19 required to perform weekly or rotating "duty," during which, along with their regular hours and  
20 functions, class members remain on-call 24 hours per day for a seven-day period and may be  
21 called into their garages or out into the field at any time. Class members typically work many  
22 additional hours on their "duty" weeks and may work a total of up to *100 hours or more*. While  
23 some Field Managers used to receive small lump sum stipends (or "duty pay") for weekend or  
24 week-long duty, the Company has since eliminated duty pay, and Plaintiffs and class members no  
25 longer receive even this scant compensation for performing these off-hour services.

26 6. Plaintiffs sue on behalf of themselves and other similarly situated Field Managers  
27  
28 \_\_\_\_\_  
direct reports in the field.

1 who worked for AT&T/PacBell and who elect to opt into this action pursuant to the Fair Labor  
2 Standards Act ("FLSA"), 29 U.S.C. §§ 201 *et seq.*, specifically the collective action provision of  
3 the FLSA, 29 U.S.C. § 216(b). This action claims that Defendants have violated the wage-and-  
4 hour provisions of the FLSA by depriving Plaintiffs, as well as others similarly situated to  
5 Plaintiffs, of their lawful overtime wages.

6 7. Since at least 2006, Defendants have willfully committed widespread violations of  
7 the FLSA by misclassifying all Field Managers as salaried *exempt* employees regardless of their  
8 actual duties and responsibilities. In actuality, the members of the Plaintiff collective class are  
9 *not exempt* from the wage and hour laws.

10 8. The national FLSA class, represented by Plaintiff Luque, is the following:

11 All Field Managers employed by AT&T Corp. nationwide from  
12 December 2006 and thereafter.

13 9. The California FLSA class, represented by all Plaintiffs, is the following:

14 All Field Managers employed by PacBell and/or AT&T in the  
15 State of California from December 2006 and thereafter.

16 10. Accordingly, Defendants are liable for failing to pay these employees for hours  
17 worked in excess of 40 hours per week at a rate of one-and-one-half times their regular rate of  
18 pay.

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

22 12. Plaintiffs also bring this action under the California overtime statutes and  
23 regulations and California's unfair competition laws. More specifically, the Class  
24 Representatives assert that they and the class members are entitled to unpaid wages (including  
25 compensation at the overtime rate of one and one-half times their regular rates of pay) for their  
26 work beyond 40 hours per week pursuant to California law, as well as additional statutory  
27 damages and penalties. Plaintiffs seek class certification under Rule 23 of the Federal Rules of  
28 Civil Procedure of the following class of AT&T/PacBell employees who have been denied  
overtime wages mandated by this state law:

1 All Field Managers employed by PacBell and/or AT&T in the  
2 State of California from December 2005 and thereafter.

3 **II. JURISDICTION AND VENUE**

4 13. This Court has jurisdiction over the claims asserted in this action pursuant to 28  
5 U.S.C. § 1331, because the action arises under a federal statute, 29 U.S.C. § 216(b). The Court  
6 has supplemental jurisdiction over the state labor law and unfair competition claims pursuant to  
7 28 U.S.C. § 1367.

8 14. Defendants PacBell and AT&T Communications of California are subject to  
9 personal jurisdiction as California corporations conducting substantial and continuous  
10 commercial activities in California. Defendant AT&T Corp. is subject to personal jurisdiction  
11 because it also conducts substantial and continuous commercial activities in California. This case  
12 arises from Defendants' wrongful conduct in California, where Defendants employed Plaintiffs  
13 and the members of the proposed state class.

14 15. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(1) and (2). A  
15 substantial part of the events and the omissions giving rise to Plaintiff's claims occurred in this  
16 district. Additionally, Defendants are deemed to reside in this district under 1391(c) because they  
17 are subject to personal jurisdiction in the district, and maintain their California headquarters in  
18 San Francisco.

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

21 **III. PARTIES**

22 **A. The Representative Plaintiffs**

23 17. **Plaintiff Joe L. Luque** ("Mr. Luque") resides in Delano, California. Mr. Luque  
24 worked for AT&T Corp. and its predecessor companies from 1972 to September 2009 and was a  
25 First Level Manager beginning in 1987.

26 18. **Plaintiff Herman Richardson** ("Mr. Richardson") resides in San Jose, California.  
27 Mr. Richardson has worked for PacBell/AT&T and their predecessor companies since 1990 and  
28 has been a First Level Manager since 1997. Mr. Richardson was also a First Level Manager from

1 1992 to 1995.

2 **B. The Defendants**

3 19. Defendant AT&T Corp. ("Corp"), a subsidiary of AT&T, Inc., is, and at all  
4 material times herein was, a corporation organized under the laws of the State of New York with  
5 its principal place of business in Bedminster, New Jersey. Defendant AT&T Corp. is a  
6 telecommunications company that provides various telecommunications services nationwide.  
7 Defendant AT&T Corp. does a substantial volume of business in California and employs  
8 hundreds or thousands of people in California.

9 20. Defendant Pacific Bell Telephone Co. ("PacBell") is, and at all material times  
10 herein was, a corporation organized under the laws of the State of California with its headquarters  
11 and principal place of business in San Francisco, California. PacBell is a subsidiary of AT&T  
12 and does business as AT&T California. PacBell is a state-wide operating company for AT&T  
13 and provides telecommunications services throughout California. PacBell is under the umbrella  
14 of AT&T's regional holding company Pacific Telesis Group, Inc. d/b/a AT&T West, also based  
15 in San Francisco.

16 21. Defendant AT&T Communications of California, Inc., ("Communications") a  
17 subsidiary of AT&T, is, and at all material times herein was, a corporation organized under the  
18 laws of the State of California with its principal place of business in San Francisco, California.  
19 Defendant AT&T Communications of California provides telecommunications services  
20 throughout California.

21 22. Defendants Corp.'s and Communications' employees in California are considered  
22 "Legacy" AT&T employees, a status resulting from the company's various permutations  
23 resulting from the breakup of AT&T in 1984 and merger with SBC in 2005, and are essentially  
24 no different in substance than PacBell workers. Legacy AT&T employees work alongside  
25 PacBell employees, are considered part of the same work groups, have the same basic duties and  
26 responsibilities, and are subject to common policies, practices, and procedures – including  
27 overtime policies – which largely emanate from AT&T corporate headquarters.

28 23. In addition to employing "Legacy" AT&T workers in California, Defendant Corp.

1 also employs thousands of telecommunications workers nationwide. AT&T Corp. operates  
2 mainly in states which are outside of the primary 22-state service area covered by AT&T Inc.'s  
3 local and regional operating subsidiaries (e.g. BellSouth Telecommunications, Inc. d/b/a AT&T  
4 Southeast and The Southern New England Telephone Co. d/b/a AT&T Connecticut). Upon  
5 information and belief, Corp.'s Field Managers nationwide are subject to common policies,  
6 practices, and procedures – including overtime policies – which emanate from its corporate  
7 headquarters.

8         24. Defendants, as regulated businesses pursuant to the rules of the Federal  
9 Communications Commission, engage in interstate commerce or engage in the delivery of goods  
10 and services for commerce.

11         25. The overtime wage provisions set forth in § 206 and § 207 of the FLSA, and in  
12 California labor law, apply to Defendants. The class members' Level One jobs as Field  
13 Managers are not positions involving work that falls within any exception or exemption set forth  
14 in 29 U.S.C. § 213(a)(1) or California law.

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

##### 16 **A. Plaintiff Joe Luque**

17         26. Plaintiff Luque began working for Pacific Telephone, a former AT&T operating  
18 company, in 1972 as a communications technician. In or about 1984, with the breakup of AT&T,  
19 he became a "Legacy" AT&T employee employed by AT&T Corp. Mr. Luque's position as a  
20 technician was classified as "non-exempt" by the company and thus Mr. Luque was paid  
21 overtime wages.

22         27. In or about May 1987, Mr. Luque began working as a Field Manager in Blythe,  
23 California. He held the same position – under various titles and in different locations – until  
24 September 2009, when he retired from the Company. At the time of his retirement, Mr. Luque  
25 worked as a Field Manager in Bakersfield, California. Although Mr. Luque's position was the  
26 same throughout this period, the Company kept changing its Field Managers' titles. Mr. Luque's  
27 last title at AT&T, which he held for approximately the last three years of his employment, was  
28 Network Manager, Operations.

1           28.     Throughout the period from 1987 to his retirement in 2009, Mr. Luque was a so-  
2 called "Field Manager" with a crew of technicians. His primary duties included: passing work to  
3 technicians, relaying information between the Company and the technicians, clerical tasks and  
4 paperwork, and performing safety and quality inspections (spot checks) with a detailed checklist  
5 provided by the Company.

6           29.     In his role as Field Manager, Mr. Luque did not exercise discretion or independent  
7 judgment. During the last several years, particularly following the merger between AT&T and  
8 SBC in 2005, Mr. Luque's authority has been even more severely cordoned.

9           30.     Much of Mr. Luque's time at work was spent on basic clerical tasks.

10          31.     During the relevant period, Mr. Luque did not determine what work was to be  
11 done or in what time frame. Work assignments were generated by computer and given to  
12 technicians by the Company. Mr. Luque had only a minor role in readjusting work assignments,  
13 which did not require the exercise of significant discretion.

14          32.     When jobs required overtime hours, Mr. Luque did not have the authority to  
15 determine which technician would work the additional hours. Instead, technicians volunteered  
16 for the overtime duty and the technician with the lowest number of overtime hours had to be  
17 given the assignment.

18          33.     Mr. Luque did not have the authority to hire, fire, or promote technicians,  
19 determine their pay rates or benefits, or give raises. Mr. Luque was unable to make other  
20 personnel decisions.

21          34.     On one occasion, Mr. Luque attempted to terminate a technician who had been  
22 discovered high on drugs on the job and who had abandoned his company vehicle. Mr. Luque  
23 immediately contacted management to inform the company of his actions. An upper-level  
24 manager responded irately: "Who the f--k do you think you are to fire someone?! You can't fire  
25 anyone. You don't have the authority." Mr. Luque was told to immediately reinstate the  
26 technician and place him on administrative leave pending the company's investigation. The  
27 company ultimately decided not to terminate the technician, although he resigned a few months  
28 later after a drug rehabilitation program proved unsuccessful.



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

6           36.    Mr. Luque performed required safety and quality inspections of technicians in the  
7 field using a pre-written checklist. These inspections do not involve subjective assessments, but  
8 only discrete yes-or-no answers. Mr. Luque had no role in writing or altering the checklists.

9           37.    Mr. Luque did not have a distinct role in training technicians or determining what  
10 training they were to receive. Technicians received their primary training from the Company's  
11 training center as well as online computer programs. Additional training in the field provided to  
12 new members of Mr. Luque's team could be given by Mr. Luque or by another technician,  
13 without distinction.

14          38.    Mr. Luque did not determine the tools and equipment to be used on the job.  
15 Materials were either provided directly by the company or Mr. Luque was instructed from above  
16 what items to order from an outside supplier; he needed approval to do so and could only place  
17 orders within preset per item and per month limits.

18          39.    Defendants treated Mr. Luque and all other similarly situated Field Managers as  
19 exempt from the overtime pay requirements of the FLSA and California law.

20          40.    Mr. Luque routinely worked more than 8 hours a day and 40 hours per week for  
21 Defendants. Mr. Luque regularly worked 10 to 14 hour days at the Company as well as  
22 occasional weekends. During the last several years, he was on call 24 hours per day seven days  
23 per week and could be called into work at any time.

24          41.    On average, Mr. Luque worked at least 55 to 60 hours per week.

25          42.    During the long hours he put in at AT&T, Defendants did not provide for Mr.  
26 Luque to take uninterrupted meal breaks or other rest breaks.

27          43.    Defendants have misclassified Mr. Luque and all other similarly situated Field  
28 Managers as exempt, despite their performance of non-exempt duties.

1           44.     Given Mr. Luque's status as an "exempt" employee, AT&T's computer and  
2 payroll systems automatically recorded him as having worked a 40-hour week, regardless of his  
3 actual hours worked. AT&T did not compensate Mr. Luque for hours over 40 that he worked in  
4 a given week, and did not pay a rate of one-and-one-half times his regular pay for these hours.

5           45.     Mr. Luque retired from the company in September 2009. Although Mr. Luque's  
6 separation from employment with the company occurred at the end of September, AT&T has  
7 failed and continues to fail to pay Mr. Luque the unpaid wages and overtime due to him. Upon  
8 information and belief, AT&T and PacBell have also failed to pay all other Field Managers the  
9 overtime pay they are owed upon their separation from employment, as required by California  
10 Labor Code §§ 201 and 202.

11           **B.     Plaintiff Herman Richardson**

12           46.     Plaintiff Richardson began working for PacBell in 1990 in operator services.  
13 Subsequently, Mr. Richardson worked as an Outside Plant Technician (OPT) and Maintenance  
14 Splicing Technician (MST). These positions were classified as "non-exempt" by the company  
15 and thus Mr. Richardson was paid overtime wages.

16           47.     From approximately 1992 to 1995, Mr. Richardson worked as a First Level  
17 Manager in Construction and was assigned a "line crew." In approximately 1997, Mr.  
18 Richardson became a Core Installation and Maintenance (I&M) Manager, a Level One position  
19 which he has held to the present. He currently is assigned a crew of 27 MSTs in Fremont,  
20 California. These technicians perform cable maintenance.

21           48.     Throughout the period from 1992 to 1995 and 1997 to the present, Mr. Richardson  
22 has been a so-called "Field Manager" with a crew of technicians. His primary duties include:  
23 passing work to technicians, relaying information between the Company and the technicians,  
24 clerical tasks and paperwork, and performing safety and quality inspections (spot checks) with a  
25 detailed checklist provided by the Company.

26           49.     In his role as Field Manager, Mr. Richardson does not exercise discretion or  
27 independent judgment. During the last several years, particularly following the AT&T-SBC  
28 merger in 2005, Mr. Richardson's authority has been even more severely cordoned.

1 50. Much of Mr. Richardson's time at work is spent on basic clerical tasks.

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

6 52. When jobs require overtime hours, Mr. Richardson does not have the authority to  
7 determine which technician will work the additional hours. Instead, technicians volunteer for the  
8 overtime duty and the technician with the lowest number of overtime hours must be given the  
9 assignment.

10 53. Mr. Richardson does not have the authority to hire, fire, or promote technicians,  
11 determine their pay rates or benefits, or give raises. Mr. Richardson is unable to make other  
12 personnel decisions.

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

18 55. Mr. Richardson performs required safety and quality inspections of technicians in  
19 the field using a pre-written checklist. These inspections do not involve subjective assessments,  
20 but only discrete yes-or-no answers. Mr. Richardson has no role in writing or altering the  
21 checklists.

22 56. Mr. Richardson does not have a distinct role in training technicians and does not  
23 determine what training they are to receive. Technicians receive their primary training from the  
24 Company's training center as well as online computer programs. Additional training in the field  
25 provided to new members of Mr. Richardson's team could be given by Mr. Richardson or by  
26 another technician, without distinction.

27 57. Mr. Richardson does not determine the tools and equipment to be used on the job.  
28 Materials are either provided directly by the company or Mr. Richardson is instructed from above

1 what items to order from an outside supplier; he needs approval to do so and can only place  
2 orders within preset per item and per month limits.

3 58. Defendants treat Mr. Richardson and all other similarly situated Field Managers as  
4 exempt from the overtime requirements of the FLSA and California law.

5 59. Mr. Richardson routinely works more than 8 hours a day and 40 hours per week  
6 for Defendant. Mr. Richardson regularly works at least 10 hours per day at the Company on a  
7 daily basis, as well as periodic weekend assignments.

8 60. In addition, Mr. Richardson is on rotating "duty," where he is on call once every  
9 several weeks for 24 hours a day for an entire seven day period. During his duty weeks, Mr.  
10 Richardson can be called into work at any time and frequently works weekends. Regardless of  
11 how many extra hours he is forced to work during his duty weeks, Mr. Richardson does not  
12 receive any additional pay for coming into work.

13 61. On average, Mr. Richardson works at least 50 hours per week on a regular week  
14 and many hours more on duty weeks, including Saturdays and Sundays. Mr. Richardson works a  
15 minimum of approximately 70 hours on his duty weeks.

16 62. During the long hours he puts in at PacBell, Defendants do not provide for Mr.  
17 Richardson to take uninterrupted meal breaks or other rest breaks.

18 63. Defendants have misclassified Mr. Richardson and all other similarly situated  
19 Field Managers as exempt, despite their performance of non-exempt duties.

20 64. Given Mr. Richardson's status as an "exempt" employee, PacBell/AT&T's  
21 computer and payroll systems automatically record him as having worked a 40-hour week,  
22 regardless of his actual hours worked. PacBell/AT&T does not compensate Mr. Richardson for  
23 hours over 40 that he works in a given week, and does not pay a rate of one-and-one-half times  
24 his regular pay for these hours.

## 25 **V. CLASS-WIDE FACTUAL ALLEGATIONS**

### 26 **A. Plaintiffs and the class members are "managers" in name only**

27 65. Although Plaintiffs and the class members are called "Managers," they do not  
28 have managerial duties or authority and are essentially managers in name only. Plaintiffs and the

1 class members are considered little more than worker bees – glorified clerks who are informed of  
2 policies and decisions passed down by the Company only a few minutes before their general  
3 announcement to the technicians or the public. In or about 2000, Mr. Luque was told by a  
4 colleague that a monkey could do the job of a Level One Field Manager. It is widely  
5 acknowledged at AT&T/PacBell that management actually starts at Second Level or above.

6 66. During Plaintiffs' long tenure at AT&T/PacBell, these truths have become even  
7 more pronounced as the class members' jobs have become progressively more controlled and  
8 micromanaged, their supervisory authority slashed, and their duties increasingly more clerical. In  
9 particular, following the merger of SBC and AT&T in 2005, the class members' duties have  
10 become even more standardized across departments and regions.

11 67. Over the relevant class period, from December 2005 to the present, the class  
12 members have essentially acted as paper pushers and functionaries, following the dictates of the  
13 Company.

14 68. At the same time, it is now widely acknowledged that AT&T/PacBell technicians  
15 – the class members' supposed subordinates – commonly out-earn the Field Managers and have  
16 superior benefits.

17 69. Although Plaintiffs and the class members have the job duties and responsibilities  
18 of workers or “foot soldiers” of the Company, Defendants attempt to characterize them as  
19 management for purposes of federal and state overtime laws.

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

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

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

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

5           73.    Defendants have recently implemented computer programs and modules which  
6 consummate the long-standing process of standardizing the class members' jobs. AT&T's  
7 ultimate intention is that all Field Managers perform the job in exactly the same way and are  
8 practically interchangeable.

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

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

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

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

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

20           78.    In fact, Plaintiffs and the class members have virtually no independent authority in  
21 matters of even limited import. For example, on separate occasions, Plaintiff Luque was told by  
22 upper management around the time of the SBC merger that he could no longer purchase bottled  
23 water for his crew, even though the techs did not trust the local water and refused to drink from  
24 the water fountains; that he could no longer buy breakfast or lunch for his crew in any  
25 circumstances; and that he could not maintain the grounds of the company's flagship property in  
26 Newhall, California despite the fact that the site was part of a homeowner's association with strict  
27 maintenance requirements. Mr. Luque had no input into these decisions but simply had to follow  
28 company orders.

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

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

9           80. Plaintiffs and the class members have a strictly limited role in disciplining  
10 technicians and are rarely able to do anything without authorization or express direction from  
11 their supervisors. All disciplinary decisions are made by Plaintiffs' and the class members'  
12 supervisors and/or dictated by Company policy -- including the technicians' collective bargaining  
13 agreement -- from which they are not permitted to deviate.

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

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

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

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

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

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

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

10          87.     Field Managers in certain positions receive a pre-set bucket of work assignments  
11 with established due dates, and simply divide the work by the number of technicians on their  
12 teams. Other Field Managers have some role in reshuffling the Company's pre-assigned work  
13 schedules as needed. Field Managers, however, do not exercise significant judgment or  
14 discretion in performing these routine tasks.

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

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

24          90.     Plaintiffs and the class members have no authority over their technicians' work  
25 hours, which are set by the collective bargaining agreement and/or by the Company. Plaintiffs  
26 and the class members do not determine when overtime is available, nor do they select which  
27 technicians will work overtime. Upon the Company's directive, overtime is either freely  
28 available at the technicians' discretion, or the class members proceed down a prescribed list (by



1 least to most overtime worked that year) until they have enough technicians who agree to work  
2 the required overtime.

3 91. Plaintiffs and the class members do not handle employee complaints and  
4 grievances. Field Managers may be present at the first step of the grievance process, but it is  
5 commonly-understood practice that nothing is resolved at the initial stage. Following this stage,  
6 Plaintiffs and the class members have no role in the grievance process and do not make any  
7 related decisions.

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

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

21 94. Some class members assist with conducting field training when new technicians  
22 join their crew. This is no different than the peer-to-peer training given by experienced  
23 technicians. In general, if a class member observes a technician using an incorrect technique, he  
24 or she will instruct the technician to use the proper, Company-taught method – as would another  
25 technician witnessing the same error. Many Field Managers do not have a technical background  
26 or experience, which are not required for the job, and do not provide training.

27 95. Plaintiffs and the class members have no role in formulating Company safety  
28 guidelines, policies, or procedures, which are set by management and/or the safety department.

1 Level One Managers and their technicians receive detailed and specific safety training from the  
2 Company. Plaintiffs and the class members also relay Company safety directives and notices to  
3 their technicians in short meetings, or "tailgates."

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

10 97. Field Managers also occasionally perform routine "investigations" of customer  
11 complaints and/or property damage. Plaintiffs and the class members do not arrive at their own  
12 opinions and conclusions as to whether a technician is responsible or what the outcome should  
13 be, but simply record the statements of any witnesses and pass along a "report" to their managers  
14 or to a designated department.

15 98. Plaintiffs and the class members customarily and regularly perform:

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

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

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

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

28 101. Plaintiff and the class members work in excess of 40 hours per week on a regular,

1 weekly basis. Level One Managers typically work a minimum of 45 hours per week and may  
2 work a range of approximately 50-70 hours per week.

3 102. While Plaintiff Luque was on call on a 24/7 basis every week, Plaintiff Richardson  
4 and many of the class members are on a system where each Field Manager under a Level Two (or  
5 Area Manager) is on designated "duty" on a rotating basis. On their "duty" weeks,  
6 approximately once every three or four weeks for a typical class member, Plaintiffs and the class  
7 members are tied to their cell phones and liable to be called at any time, day or night, for seven  
8 days in a row (168 hours). They are unable to make outside plans, and work unlimited hours  
9 depending on how busy things are that week – heavily influenced by weather and other  
10 emergency conditions.

11 103. In a common situation, a class member will be called at home or two or three in  
12 the morning and asked to go down the overtime list and – proceeding according to the  
13 Company's overtime rules – find a technician to come out to work on an emergency job.  
14 Plaintiffs and the class members are required to be present at the work site until the job is  
15 completed. Company guidelines and policies dictate the number of technicians to be called in  
16 and the procedures to be followed in given situations.

17 104. An especially "light" duty week involves several additional hours of work beyond  
18 the class members' normal hours, an average scenario may require 20 extra hours or more, and  
19 heavy activity may push a Field Manager's total working hours for the week to upwards of 100  
20 hours.

21 105. Upon information and belief, some of the class members used to be paid modest  
22 compensation or "duty" pay for required weekend service or for remaining on call for an entire  
23 week. This lump sum "duty" pay did not come close to approximating the overtime rate for the  
24 additional hours worked while on duty. For example, a class member paid at a regular rate of  
25 \$30.00 per hour would still receive the same modest duty pay during a week in which he or she  
26 worked 10 additional hours (entailing overtime pay of \$450 at one and one-half times the regular  
27 rate), 20 additional hours (\$900 in overtime compensation), or 50 additional hours (\$2,250).  
28 Upon information and belief, the Company has eliminated duty pay for all class members and

1 now provides no additional compensation for working on weekends or performing on-call duty.

2 106. Upon information and belief, some of the class members used to receive overtime  
3 pay until approximately the mid-1990s. As a cost-cutting measure, the Company deliberately  
4 reclassified Plaintiffs and the class members as exempt despite their ever-decreasing level of  
5 responsibility.

6 107. During Field Managers' long hours at AT&T/PacBell, Defendants do not provide  
7 uninterrupted meal breaks or other rest breaks.

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

9 108. Defendants AT&T/PacBell misclassify non-exempt Field Managers as salaried  
10 exempt employees.

11 109. Defendants have intentionally and repeatedly engaged in a practice of improperly  
12 misclassifying non-exempt Field Managers as salaried exempt employees.

13 110. Plaintiff Luque brings a national FLSA claim on behalf of the following category  
14 of similarly-situated individuals who worked for Defendant Corp. at any time from three years  
15 prior to the filing of this Complaint to entry of judgment in this case:

16 All Field Managers employed by AT&T Corp. nationwide from  
17 December 2006 and thereafter.

18 111. Plaintiffs Luque and Richardson bring a FLSA claim on behalf of the following  
19 category of similarly situated employees in California:

20 All Field Managers employed by PacBell and/or AT&T in the  
21 State of California from December 2006 and thereafter.

22 112. Defendants are liable under the FLSA for failing to properly compensate  
23 Plaintiffs, and therefore, notice should be sent to past and present Field Managers. There are  
24 numerous (approximately several thousand) similarly-situated current and former Field Managers  
25 who have been misclassified in violation of the FLSA and who would benefit from the issuance  
26 of a court supervised Notice of the present lawsuit and the opportunity to join in the present  
27 lawsuit. Those similarly situated employees are known to Defendants, are readily identifiable,  
28 and can be located through Defendants' records.

1 **VII. CLASS ACTION ALLEGATIONS UNDER CALIFORNIA LABOR AND UNFAIR**  
2 **COMPETITION LAW**

3 113. Representative Plaintiffs Joe Luque and Herman Richardson bring this class action  
4 to recover damages under California law, and to recover overtime wages on behalf of themselves  
5 and the following class of current and former PacBell/AT&T Field Managers in California who  
6 have been deprived of lawful overtime wages as mandated by California labor law, California  
7 unfair competition law, and governing regulations. This action also includes all such employees  
8 whom Defendants continue to deprive of required overtime wages in the future.

9 All Field Managers employed by PacBell and/or AT&T in the  
10 State of California from December 2005 and thereafter.

11 114. This action is properly brought as a class action for the following reasons:

- 12 a. The class consists of approximately 1,000 persons or more and is so  
13 numerous that joinder of all members, whether required or permitted, is  
14 impracticable.
- 15 b. There exist questions of fact and law common to the class which  
16 predominate over any questions affecting only individual members  
17 including:
- 18 (1) Whether PacBell/AT&T improperly withheld overtime wages from  
19 its Field Managers;
- 20 (2) Whether PacBell/AT&T has violated and continues to violate  
21 California Labor Code § 510 and Wage Order No. 4-2001 by  
22 failing to pay overtime compensation to Field Managers who work  
23 in excess of forty (40) hours per week and/or eight (8) hours per  
24 day;
- 25 (3) Whether PacBell/AT&T has violated and continues to violate  
26 California Labor Code §§ 226 and 1174 by failing to keep accurate  
27 records of employees' hours of work and hourly wages and by  
28 failing to timely furnish each Field Manager with a statement  
accurately showing the total number of hours worked and wages  
earned each pay period;
- (4) Whether PacBell/AT&T has violated and continues to violate  
California Labor Code §§ 201 and 202 by failing to timely pay  
employees unpaid wages and overtime due upon their separation  
from employment with the company;

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(5) Whether PacBell/AT&T has violated and continues to violate California Labor Code §§ 226.7 and 512 and I.W.C. Wage Order No. 4-2001 by failing to provide employees with statutorily-mandated meal breaks and rest breaks;

(6) Whether PacBell/AT&T has violated and continues to violate California Business and Professions Code §§ 17200 by its failure to pay legally required overtime compensation, failure to pay all wages earned and due, and failure to timely furnish Field Managers with statements accurately showing their hours worked.

(7) whether PacBell/AT&T is liable to the class; and

(8) whether the class can be made whole by payment of damages.

c. Plaintiffs Luque's and Richardson's claims are typical of the claims of the class. Like all class members, Plaintiffs were injured by Defendants' refusal to pay full and lawful overtime wages. Plaintiffs have suffered the same kind of harm as other class members who are PacBell/AT&T employees in California.

d. Plaintiffs have hired counsel who are able and experienced in class action litigation, and will fairly and adequately protect the interests of the class.

e. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. The expense of individual litigation may be prohibitive and render it impractical for class members to sue Defendants for wrongfully withheld overtime wages.

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

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

116. At all relevant times, Defendants have been and continue to be "employers" engaged in interstate "commerce" within the meaning of the FLSA, 29 U.S.C. § 203. At all relevant times, AT&T and PacBell have employed and continue to employ Field Managers as "employee[s]" within the meaning of the FLSA. At all relevant times, Defendants have had gross operating revenues far in excess of \$500,000.

117. Because Defendants willfully violated the FLSA by misclassifying Plaintiffs as exempt employees, a three-year statute of limitations applies to such violations, pursuant to 29

1 U.S.C. § 255.

2 118. PacBell/AT&T has willfully and intentionally engaged in a widespread pattern  
3 and practice of violating the provisions of the FLSA, as detailed herein, by misclassifying  
4 Plaintiffs and similarly-situated Field Managers as “exempt” employees, and thereby failing and  
5 refusing to pay the them proper hourly wage compensation in accordance with § 206 and § 207  
6 of the FLSA.

7 119. Plaintiffs and the class members are not employed in a “bona fide executive,  
8 administrative, or professional capacity” pursuant to 29 U.S.C. § 213(a)(1) and corresponding  
9 regulations. Plaintiffs and the class members are not subject to any other exemptions set forth in  
10 the FLSA or administrative regulations.

11 120. As a result of Defendants’ violations of the FLSA, Plaintiffs, as well as all others  
12 similarly situated, have suffered damages by being denied overtime wages in accordance with §  
13 206 and § 207 of the FLSA.

14 121. Defendants have not made a good faith effort to comply with the FLSA with  
15 respect to its compensation of Plaintiffs and other similarly situated present and former First  
16 Level Managers.

17 122. At all relevant times, Defendants willfully, regularly, and repeatedly failed and  
18 continue to fail to make, keep, and preserve accurate time records required by the FLSA, 29  
19 U.S.C. § 211(c), with respect to its Field Managers. Through this course of conduct, Defendants  
20 have deprived Plaintiffs and the Class Members of the records necessary to calculate with  
21 precision the overtime compensation due to them.

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

**SECOND CLAIM FOR RELIEF (CALIFORNIA LABOR LAW)**  
**UNLAWFUL FAILURE TO PAY REQUIRED OVERTIME**  
**AND KEEP ACCURATE RECORDS**  
**(WAGE ORDER NO. 4-2001; LABOR CODE §§ 226, 510, 1194 ET SEQ.)**

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124. Representative Plaintiffs Luque and Richardson allege and incorporate by reference the preceding allegations of this complaint as if fully alleged herein.

125. Throughout the relevant three-year statute of limitations, Defendants operated under and continue to operate under a common policy and plan of willfully, regularly, and repeatedly failing and refusing to pay Field Managers for overtime at the rates required by California Labor Code § 510 and Wage Order No. 4-2001. Defendants knew or clearly should have known that Plaintiffs and the class members solely or predominantly performed non-exempt duties, were not subject to any enumerated exemptions to California's overtime mandates – including exemptions for *bona fide* administrative or executive employees, and were thus entitled to overtime.

126. Through this unlawful course of conduct, Defendants have deprived and continue to deprive Plaintiffs and the Class Members the time and a half rate for work performed in excess of forty (40) hours per workweek and in excess of eight (8) hours per workday to which they were and are entitled.

127. Throughout the relevant three-year statute of limitations, PacBell/AT&T willfully, regularly, and repeatedly failed and continues to fail to make, keep, and preserve accurate time records required by the California Labor Code §§ 226 and 1174, with respect to Field Managers. Through this unlawful course of conduct, Defendants have deprived and continue to deprive Plaintiff and the Class Members with records necessary to calculate with precision the overtime compensation due to them.

128. As a result, under Labor Code § 1194, Plaintiffs and the Class Members are entitled to damages in the amount of their respective unpaid overtime compensation plus interest, reasonable attorneys' fees and costs, injunctive relief, and such other legal and equitable relief as the Court deems just and proper.



1                                    **THIRD CAUSE OF ACTION (CALIFORNIA LABOR LAW)**  
2                                    **UNLAWFUL FAILURE TO FURNISH WAGE STATEMENTS**  
3                                    **(Wage Order No. 4-2001; Labor Code § 226)**

4            129. Plaintiffs repeat and reallege all the allegations set forth in the foregoing  
5 paragraphs.

6            130. Defendants knowingly and intentionally failed to furnish and continue to fail to  
7 furnish Plaintiffs and each Class Member with timely, itemized statements that accurately reflect  
8 total number of hours worked and wages earned, as mandated by California Labor Code § 226(a),  
9 which requires employers, semi-monthly or at the time of each payment of wages, to furnish each  
10 employee with a statement that accurately reflects the total number of hours worked.

11           131. As a result, PacBell/AT&T is liable to Plaintiffs and each of the Class Members  
12 for the amounts provided by California Labor Code § 226(e): the greater of actual damages or  
13 fifty dollars (\$50) for the initial violation and one hundred dollars (\$100) for each subsequent  
14 violation, up to four thousand dollars (\$4000).

15           132. Plaintiffs and the Class are also entitled to reasonable attorney's fees and costs  
16 pursuant to California Labor Code § 226(e).

17                                    **FOURTH CAUSE OF ACTION (CALIFORNIA LABOR LAW)**  
18                                    **UNLAWFUL FAILURE TO KEEP REQUIRED PAYROLL RECORDS**  
19                                    **(WAGE ORDER NO. 4-2001; LABOR CODE § 226)**

20           133. Plaintiffs repeat and reallege all the allegations set forth in the foregoing  
21 paragraphs.

22           134. Defendants violated California Labor Code §§ 226 and 1174 by willfully failing to  
23 keep required payroll records showing the hours worked daily by Field Managers.

24           135. Defendants are liable for a statutory penalty pursuant to the California Labor Code  
25 § 226.

26           136. Plaintiffs and the Class are also entitled to reasonable attorneys' fees and costs  
27 pursuant to California Labor Code § 226(e).

28                                    **FIFTH CAUSE OF ACTION (CALIFORNIA LABOR LAW)**  
                                  **UNLAWFUL FAILURE TO PROVIDE FULL AND UNINTERRUPTED OFF-DUTY MEAL PERIODS**  
                                  **(LABOR CODE §§ 226.7 AND 512, AND WAGE ORDER NO. 4-2001)**

                                  137. Plaintiffs repeat and reallege all the allegations set forth in the foregoing

1 paragraphs.

2 138. Throughout the relevant three-year statute of limitations, PacBell and AT&T have  
3 operated under and continue to operate under a common policy and plan of failing and refusing to  
4 afford Plaintiffs and Class Members at least half-hour meal periods after five and then after ten  
5 hours of work in which they were relieved of all duties, as required by I.W.C. Wage Order No. 4-  
6 2001 and Labor Code §§ 226.7 and 512.

7 139. Plaintiffs and Class Members were regularly expected to work during lunch and  
8 other meal breaks.

9 140. Defendants are liable for unpaid wages and statutory penalties pursuant to I.W.C.  
10 Wage Order 4-2001 and Labor Code § 226.7.

11 141. Pursuant to I.W.C. Wage Order 4-2001, Labor Code §§ 226.7 and 512,  
12 Defendants are liable for forcing Plaintiffs and Class Members to work during the meal period  
13 mandated after five (5) hours of work for one additional hour of pay at the employee's regular  
14 rate of compensation for each work day that Defendants failed to provide the first required meal  
15 period to each Class Member.

16 142. Pursuant to I.W.C. Wage Order 4-2001, Labor Code §§ 226.7 and 512,  
17 Defendants are further liable for forcing Plaintiffs and Class Members to work during the second  
18 meal period mandated after ten hours of work for one additional hour of pay at the employee's  
19 regular rate of compensation for each work day that Defendants failed to provide the second  
20 required meal period to each Class Member.

21 143. Plaintiffs and the Class are also entitled to reasonable attorneys' fees and costs  
22 pursuant to California Labor Code § 218.5, California Code of Civil Procedure § 1021.5, and/or  
23 other applicable law.

24 **SIXTH CAUSE OF ACTION (CALIFORNIA LABOR LAW)**  
25 **UNLAWFUL FAILURE TO PROVIDE FULL AND UNINTERRUPTED PAID OFF-DUTY REST PERIODS**  
**(WAGE ORDER NO. 4-2001; LABOR CODE §§ 226.7)**

26 144. Plaintiffs repeat and reallege all the allegations set forth in the foregoing  
27 paragraphs.

28 145. Plaintiffs and Class Members were regularly compelled to work over a four (4)

1 hour period (or major fraction thereof) without Defendants authorizing and permitting them to  
2 take paid ten (10) minute rest periods during which they were relieved of all duties, as required  
3 by I.W.C. Wage Order 4-2001 § 12(A) and Labor Code § 226.7.

4 146. Defendants are liable for unpaid wages and statutory penalties pursuant to I.W.C.  
5 Wage Order 4-2001 and Labor Code § 226.7.

6 147. Pursuant to I.W.C. Wage Order 4-2001 and Labor Code §§ 226.7(b) and 218,  
7 Defendants are liable for forcing Plaintiffs and Class Members to work during the first required  
8 rest period for one additional hour of pay at the employee's regular rate of compensation for each  
9 work day that Defendants failed to permit and authorize a first mandated rest period to each Class  
10 Member.

11 148. Defendants are further liable for forcing Plaintiffs and Class Members to work  
12 during the second required rest period for one additional hour of pay at the employee's regular  
13 rate of compensation for each work day that Defendants failed to permit and authorize a second  
14 mandated rest period to each Class Member.

15 149. Defendants are further liable for forcing Plaintiffs and Class Members to work  
16 during the third required rest period for one additional hour of pay at the employee's regular rate  
17 of compensation for each work day that Defendants failed to permit and authorize a third  
18 mandated rest period to each Class Member.

19 150. Plaintiffs and the Class are also entitled to reasonable attorneys' fees and costs  
20 pursuant to California Labor Code § 218.5, California Code of Civil Procedure § 1021.5, and/or  
21 other applicable law.

22 **SEVENTH CAUSE OF ACTION (CALIFORNIA LABOR LAW)**  
23 **UNLAWFUL FAILURE TO TIMELY PAY WAGES DUE UPON SEPARATION FROM EMPLOYMENT**  
24 **(LABOR CODE §§ 201 AND 202)**

25 151. Plaintiff Luque repeats and realleges each and every allegation made in the  
26 foregoing paragraphs as if fully set forth herein.

27 152. Defendants have operated under and continue to operate under a common policy  
28 and plan of failing and refusing to timely pay unpaid wages and overtime owed to Plaintiff and  
Class Members whose employment terminated, as required by California Labor Code § 201. As a

1 result of their failure to pay terminated employees all compensation due upon discharge as  
2 required by Cal. Labor Code § 201, Defendants are liable for statutory penalties pursuant to Cal.  
3 Labor Code §§ 203 and 218.

4 153. Defendants have operated under and continue to operate under a common policy  
5 and plan of failing and refusing to timely pay unpaid wages and overtime owed to Plaintiffs and  
6 Class Members who resigned from their employment within seventy-two (72) hours of their  
7 resignation, as required by California Labor Code § 202. As a result of their failure to pay  
8 employees who quit all compensation due upon resignation as required by Cal. Labor Code §  
9 202, Defendants are liable for statutory penalties pursuant to Cal. Labor Code §§ 203 and 218.

10 154. Plaintiff and the Class are also entitled to reasonable attorneys' fees and costs  
11 pursuant to California Labor Code § 218.5, California Code of Civil Procedure § 1021.5, and/or  
12 other applicable law.

13 **EIGHTH CAUSE OF ACTION (CALIFORNIA UNFAIR COMPETITION LAW)**  
14 **UNFAIR COMPETITION**  
**(BUS. AND PROF. CODE §§ 17200-17208)**

15 155. Plaintiffs repeat and reallege all the allegations set forth in the foregoing  
16 paragraphs.

17 156. Throughout the relevant four-year statute of limitations period, PacBell/AT&T  
18 committed the various labor violations described above. Defendants' failure to pay legally  
19 required overtime compensation, failure to pay all wages earned and due, and failure to timely  
20 furnish Field Managers with statements accurately showing their hours worked, as alleged above,  
21 constitute unlawful, unfair, and/or fraudulent activity prohibited by Business and Professions  
22 Code § 17200.

23 157. As a result of its unlawful, unfair, and/or fraudulent acts, PacBell/AT&T has  
24 reaped and continues to reap unfair benefits and illegal profits at the expense of Plaintiffs and the  
25 Class Members.

26 158. PacBell/AT&T should be enjoined from this activity and made to disgorge these  
27 ill-gotten gains and restore to Plaintiffs and the Class Members the wrongfully withheld wages to  
28

1 which they are entitled, interest on these wages, and all other injunctive and preventive relief  
2 authorized by Business and Professions Code §§ 17202 and 17203.

3  
4 **PRAYER FOR RELIEF**

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

7 A. That the Court determine that this action may be maintained as a collective action  
8 under 29 U.S.C. § 216(b) and as a class action under the Federal Rules of Civil Procedure Rule  
9 23;

10 B. That, at the earliest possible time, Plaintiffs be allowed to give notice of this  
11 collective action, or that the Court issue such notice, to all persons who are presently, or have  
12 been at any time during the four years immediately preceding the filing of this suit, up through  
13 and including the date of the Court's issuance of Court-supervised Notice, been employed by  
14 PacBell/ AT&T as a Field Manager. Such persons shall be informed that this civil action has  
15 been filed, of the nature of the action, and of their right to join this lawsuit if they believe they  
16 were misclassified as exempt employees, whereas their primary or significant work duties entail  
17 duties commonly performed by non-exempt, hourly employees.

18 C. That the Court find that PacBell/AT&T has violated the overtime provisions of the  
19 FLSA, 29 U.S.C. § 207, and the overtime provisions of the California Labor Code §§ 510 and  
20 1194 and Wage Order 4-2001 as to Plaintiffs and the Class;

21 D. That the Court find that PacBell/AT&T has violated the record-keeping provisions  
22 of the FLSA, 29 U.S.C. § 211(c), the record-keeping provisions of the California Labor Code §§  
23 226 and 1174, and Wage Order 4-2001 of the Wage Orders as to Plaintiffs and the Class;

24 E. That the Court find that PacBell/AT&T has violated California Labor Code § 226  
25 by failing to timely furnish Plaintiffs and the Class Members itemized statements accurately  
26 showing the total hours they worked;

27 F. That the Court find that PacBell/AT&T has violated California Labor Code §§  
28

1 226.7 and 512 and I.W.C. Wage Order No. 4-2001 by failing to provide Field Managers with  
2 statutorily-mandated meal breaks and rest breaks;

3 G. That the Court find that PacBell/AT&T has violated Business and Professions  
4 Code § 17200 by failing to pay its Field Managers overtime compensation, by failing to keep  
5 proper time records, by failing to timely furnish Field Managers with statements accurately  
6 showing their total hours worked, and by failing to provide Account Managers with statutorily-  
7 mandated meal breaks and rest breaks;

8 H. That the Court find that PacBell/AT&T's wage and hour violations as described  
9 have been willful;

10 I. That the Court award to Plaintiffs and the Plaintiff Class compensatory and  
11 liquidated damages in excess of \$500 million for unpaid overtime compensation, including  
12 interest, and statutory penalties subject to proof at trial pursuant to 29 U.S.C. § 201 *et seq.* and  
13 the supporting United States Department of Labor regulations, and the California Labor Code,  
14 and the supporting I.W.C Wage Orders;

15 J. That the Court, pursuant to Business and Professions Code § 17200-05, order and  
16 enjoin PacBell/AT&T to pay restitution to Plaintiffs and the Class and enjoin PacBell/AT&T to  
17 cease and desist from unlawful, unfair, and/or fraudulent activities;

18 K. That the Court enjoin Defendants to cease and desist from their violations of the  
19 FLSA described herein and to comply with the FLSA;

20 L. That Plaintiffs and the Class be awarded reasonable attorneys' fees and costs  
21 pursuant to FLSA 29 U.S.C. § 216(b), California Labor Code §§ 218.5, 226(e), and 1194, Cal.  
22 Code of Civil Procedure § 1021.5, and/or other applicable law; and

23 M. That the Court award such other and further relief as this Court may deem  
24 appropriate.

25 ///

26 ///

27 ///

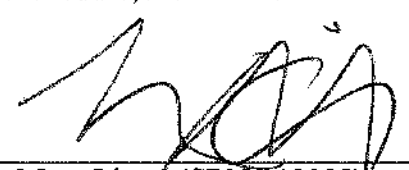
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**DEMAND FOR TRIAL BY JURY**

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.

Date: December 16, 2009

By:



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*Attorneys for Plaintiffs Joe Lewis Luque,  
Herman Richardson, and the Plaintiff Class*

# **EXHIBIT A**



**CONSENT TO JOIN FORM**

Consent to sue under the Fair Labor Standards Act (FLSA)

I work or worked for Pacific Bell Telephone Co./AT&T at some point  
since May of 1987 in the position of Network Manager-  
I worked overtime for which I was not paid. - OPS, GNFO - WEST

I consent to join the FLSA collective action titled *Joe Lewis Luque, et al. v. Pacific Bell Telephone Co.* (N.D.Cal.), to recover unpaid overtime pay under the federal Fair Labor Standards Act ("FLSA"), 29 U.S.C. §216(b), and other relief under state law.

I choose to be represented in this matter by the named plaintiffs and counsel (Law Office of Edmond Clark and Sanford Wittels & Heister, LLP) in this action.

Print Name:

Joe Lewis Luque

Signature:

Joe Lewis Luque

Date Signed:

Nov. 24, 2009

**CONSENT TO JOIN FORM**

**Consent to sue under the Fair Labor Standards Act (FLSA)**

I work or worked for Pacific Bell Telephone Co./AT&T at some point since June 4, 1990 in the position of Operator services - 1990 to 1991, Outside paint technician - 1991 to 1992, Line Crew manager from 1992-1995, MST from 1995 to 1997 and Core I&M manager from 1997 to present

I worked overtime for which I was not paid.

I consent to join the FLSA collective action titled *Joe Lewis Lague, et al. v. AT&T Corp. et al.* (N.D.Cal.), to recover unpaid overtime pay under the federal Fair Labor Standards Act ("FLSA"), 29 U.S.C. §216(b), and other relief under state law.

I choose to be represented in this matter by the named plaintiffs and counsel (Law Office of Edmond Clark and Sanford Wittels & Heisler, LLP) in this action.

Print Name: Herman Richardson

Signature:

Herman C. Richardson

Date Signed:

DEC. 9, 2009