

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION**

TAMARA BONNER, JESSICA RUSH)	
and STEPHANIE ELLIS, Individually,)	
and on Behalf of All Others Similarly)	
Situated,)	
)	Case No.
Plaintiff,)	
)	
v.)	
)	
BELLSOUTH)	
TELECOMMUNICATIONS, INC.,)	
)	
Defendant.)	

COMPLAINT

Plaintiffs Tamara Bonner (“Bonner”), Jessica Rush (“Rush”) and Stephanie Ellis (“Ellis”), individually and on behalf of all others similarly situated, by and through their undersigned counsel, for their Amended Complaint against BellSouth Telecommunications, Inc. (“BELLSOUTH”) states as follows:

JURISDICTION AND VENUE

1. This is an action for monetary damages, declaratory and injunctive relief, and other equitable and ancillary relief, brought under the Fair Labor Standards Act (“FLSA”), 29 U.S.C. §§ 201 *et seq*, for violation of the FLSA’s overtime provisions.
2. Jurisdiction over Plaintiff’s FLSA claims is based on Section 16(b) of the FLSA, 29 U.S.C. §16(b) and 28 U.S.C. §1331
3. Venue is appropriate under 28 U.S.C. §1391(b) because a substantial part of the events giving rise to these claims occurred in this District.

PARTIES

4. Plaintiffs are the individuals named above and other current and former similarly

situated individuals employed by BELLSOUTH in customer service and/or sales positions including “Sales Representative”, “Sales Associate” and “Customer Service Representative” (hereinafter collectively “Call Center Employees”) who have been victimized by Defendant BELLSOUTH’s illegal compensation practices.

5. Plaintiff Bonner was employed by Defendant BELLSOUTH as a Call Center Employee in Escambia County, Florida within the last three years. Plaintiff Bonner currently resides in Escambia County, Florida.

6. Plaintiff Rush was employed by Defendant BELLSOUTH as a Call Center Employee in Escambia County, Florida within the last three years. Plaintiff Rush currently resides in Escambia County, Florida.

7. Plaintiff Ellis was employed by Defendant BELLSOUTH as a Call Center Employee in Escambia County, Florida within the last three years. Plaintiff Ellis currently resides in Escambia County, Florida.

8. Plaintiffs are “employees” as defined by 29 U.S.C. §203(e).

9. Pursuant to 29 U.S.C. §16(b) of the FLSA, Plaintiffs’ written consents to become party Plaintiffs are attached hereto as Group Exhibit A.

10. Defendant BELLSOUTH is a company doing business and maintaining call centers in Florida.

11. Defendant is an “employer” as defined by 29 U.S.C. §203(d).

FACTS

12. Through its Call Center Employees, Defendant BELLSOUTH provided customer service to customers throughout the State of Florida.

13. Named Plaintiffs and all similarly situated employees are current and former Call

Center Employees employed by Defendant BELLSOUTH in Florida (collectively referred to herein as "Plaintiffs").

14. All Call Center Employees employed by Defendant BELLSOUTH over the last three years had essentially the same or similar job duties.

15. Pursuant to Defendant BELLSOUTH's uniform employment policies, Plaintiffs' primary duty was to field phone calls relating to customer service for BELLSOUTH.

16. Defendant BELLSOUTH also employed and employs other Call Center Employees whose primary duty was to field phone calls relating to customer service for BELLSOUTH.

17. Defendant BELLSOUTH employed and employs other Call Center Employees who performed the same or similar duties as Plaintiffs.

18. Defendant BELLSOUTH managed Plaintiffs' employment, including the amount of overtime required to be worked. Defendant BELLSOUTH dictated, controlled and ratified all wage and hour and related employee compensation policies to which Plaintiffs were subject.

19. Per Defendant BELLSOUTH's uniform company-wide policies, Plaintiffs and all similarly situated employees were compensated on an hourly basis.

20. Per Defendant BELLSOUTH's uniform company-wide policies, Plaintiffs and all similarly situated employees did not receive overtime pay for all time worked in excess of forty (40) hours in a workweek.

21. During the statutory period, Plaintiffs routinely worked in excess of forty (40) hours per week without overtime compensation by, among other things, coming in early to boot-up their computers, logging-in to BELLSOUTH's software systems, and initiating numerous software applications.

22. Defendant knew Plaintiffs were working off-the-clock by, among other things, performing tasks such as booting up their computers, logging-in to software programs, and initiating software programs.

23. Defendant BELLSOUTH failed to maintain accurate time records as required by the FLSA of all the time worked by Plaintiffs.

24. At all times herein relevant, Defendant classified Plaintiff and other similarly situated employees as non-exempt.

25. At all times herein relevant, the FLSA, 29 U.S.C. §207, required employers to pay employees one and one-half times their regular rate of pay for all hours worked over forty hours per workweek.

26. Despite Defendant's classification of Plaintiffs as non-exempt, Defendant intentionally, willfully, and improperly failed to pay overtime wages and other benefits to Plaintiffs in violation of the FLSA.

27. As a result of Defendants' wrongful conduct, Plaintiffs have been damaged in amounts to be proven at trial.

GENERAL ALLEGATIONS

28. Plaintiffs reassert and re-allege the allegations set forth in the above-paragraphs.

29. Plaintiffs, and on behalf of all similarly situated current and former employees of Defendant BELLSOUTH, its subsidiaries and affiliated companies, brings this action as a collective class action under the FLSA to recover unpaid overtime compensation, liquidated damages, unlawfully withheld wages, statutory penalties, and damages owed to Plaintiffs employed by, or formerly employed by, Defendant BELLSOUTH, its subsidiaries and affiliated companies in Florida.

30. Defendant BELLSOUTH's routine practice of failing to pay Plaintiffs overtime compensation when these employees worked in excess of forty (40) hours per week violates

the provisions of the federal FLSA, 29 U.S.C. §§ 201 *et seq.*, specifically § 207(a)(1).

31. Defendant BELLSOUTH intentionally, willfully, and improperly failed to pay overtime wages to Plaintiffs during their employment despite classifying them as non-exempt or eligible for overtime pay.

32. This failure to pay overtime by Defendant BELLSOUTH to Plaintiffs working more than 40 hours per week is a direct violation of the FLSA.

COLLECTIVE ACTION FACTUAL ALLEGATIONS

33. Plaintiffs reassert and re-allege the above paragraphs.

34. Plaintiffs seek to proceed as a collective action pursuant to 29 U.S.C. §216(b). Plaintiffs, individually and on behalf of all similarly situated employees, seek relief on a collective basis challenging Defendant's practice of failing to record all hours worked and failing to pay overtime for all overtime hours worked.

35. Plaintiffs are similarly situated because their job duties primarily consisted of providing customer service by telephone at Defendant's call centers. Plaintiffs are also similar because Defendant's policy is to regularly pay its Call Center Employees only for their scheduled hours, which usually consists of an eight hour shift, rather than paying them for all of the time they actually worked. Defendant required its Call Center Employees to arrive at work before their scheduled shifts to perform essential tasks such as booting up their computers, starting computer applications and performing other duties so they are ready to field customer calls immediately at the start of their scheduled shift. Because Defendant requires all Call Center Employees to be ready to work at least 10-15 minutes before their shift, they necessarily and regularly arrive at the call center well in advance of their scheduled shift time. Defendant also uniformly requires its Call Center

Employees to work after their shift ends to complete calls they are handling.

36. In addition, Defendant was aware that the similarly situated individuals also performed work for Defendant during their meal breaks, for which they were not paid. The work that the similarly situated employees performed during meal and rest breaks includes, but is not limited to, engaging in phone calls with customers.

37. On information and belief, the amount of uncompensated time Plaintiff and the similarly situated employees spend or have spent on these required and unpaid work activities amounts to on average approximately thirty minutes per day per person. On information and belief, this time spent by these employees can range from at least fifteen minutes per day, to over sixty minutes per day and typically resulted in overtime hours

COUNT I

VIOLATION OF THE FAIR LABOR STANDARDS ACT OF 1938

29 U.S.C. § 201 ET SEQ.

UNPAID WAGES/OVERTIME CLAIM

38. Plaintiffs reassert and re-allege the above paragraphs.

39. The current and former similarly situated employees on whose behalf Named Plaintiffs assert this claim are similarly situated because they are or were employed by Defendant BELLSOUTH in the same or similar positions as Named Plaintiffs and because they are or were subjected to the same unlawful compensation practices as Named Plaintiffs.

40. At all times material to this action, Plaintiffs are and have been entitled to the rights, benefits, and protections granted by the FLSA, 29 U.S.C. §§ 201 *et seq.*

41. The FLSA regulates the payment of overtime wages by employers whose employees are “engaged in commerce or engaged in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for

commerce.” 29 U.S.C. § 207(a)(1).

42. Defendant BELLSOUTH was and is subject to the overtime pay requirements of the FLSA because it is an enterprise engaged in commerce and its employees are engaged in commerce.

43. Defendant BELLSOUTH willfully violated the FLSA by failing to pay their Call Center Employees overtime. In the course of perpetrating these unlawful practices, BELLSOUTH has also willfully failed to keep accurate records of all hours worked by Call Center Employees.

44. Plaintiffs are victims of a uniform company-wide compensation policy. This uniform policy, in violation of the FLSA, has been applied to all Call Center Employees and deprives them of overtime.

45. Plaintiffs are entitled to damages equal to the mandated overtime premium pay for the three years preceding the filing of this Complaint, plus periods of equitable tolling, because Defendant BELLSOUTH acted willfully and knew or showed reckless disregard for the matter of whether its conduct was prohibited by Section (a) of the Portal-to-Portal Act, as amended, 29 U.S.C. §255.

46. Defendant BELLSOUTH has not acted in good faith nor with reasonable grounds to believe its actions and omissions were not a violation of the FLSA, and as a result thereof, Plaintiffs are entitled to recover an award of liquidated damages in an amount equal to the amount of unpaid overtime pay described above, pursuant to section 16(b) of the FLSA. Alternatively, should the Court find Defendant BELLSOUTH has not acted willfully in failing to pay overtime pay, Plaintiff and all similarly situated employees are entitled to an award of prejudgment interest at the applicable legal rate.

47. As a result of the aforementioned willful violations of the FLSA, Defendant BELLSOUTH has unlawfully withheld overtime pay from Plaintiffs and all similarly situated employees for which Defendant BELLSOUTH is liable under 29 U.S.C. §216(b), together with an equal amount as liquidated damages, prejudgment and postjudgment interest, reasonable attorneys' fees and costs of this action.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs, Tamara Bonner, Jessica Rush and Stephanie Ellis, individually and on behalf of all others similarly situated, by and through their attorneys, demand judgment against the Defendant, BellSouth Telecommunications, Inc., and in favor of Plaintiffs and all others similarly situated, for a sum that will properly, adequately, and completely compensate Plaintiffs and all others similarly situated for the nature, extent, and duration of their damages, the costs of this action, and as follows:

1. Order the Defendants to file with this Court and furnish to counsel a list of all names and addresses of all Call Center Employees employed by Defendant in Florida who currently work or have worked for the Defendant within the last three (3) years;
2. Authorize Plaintiff's counsel to issue notice at the earliest possible time to all current and former Call Center Employees employed by the Defendant in Florida during the three (3) years immediately preceding this action, informing them that this action has been filed, of the nature of the action, and of their right to opt-in to this lawsuit if they worked hours in excess of forty (40) hours in a week during the liability period, but were not paid overtime as required by the FLSA;
3. Declare and find that Defendant committed one or more of the following acts:
 - a. Violated overtime provisions of the FLSA by failing to pay overtime

wages to Plaintiff and similarly situated persons who opt-in to this action;
and,

- b. Willfully violated overtime provisions of the FLSA;
4. Award compensatory damages, including all overtime pay owed, in an amount according to proof;
5. Award interest on all overtime compensation due accruing from the date such amounts were due;
6. Award an equal amount as liquidated damages;
7. Award all costs and attorney's fees incurred prosecuting this claim;
8. Grant leave to amend to add claims under applicable state laws;
9. Grant leave to add additional plaintiffs by motion, the filing of written consent forms, or any other method approved by the Court; and
10. Grant such further relief as the Court deems just and equitable.

JURY DEMAND

Plaintiff demands trial by jury.

Dated: November 20, 2008

Respectfully Submitted,

/s/ Jeremiah J. Talbott

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