

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MISSOURI**

REBECCA DERNOVISH & ALEX  
WELCH, individually and on behalf of all  
others similarly situated,

Plaintiffs,

v.

AT&T OPERATIONS, INC. (f/k/a SBC  
Operations Inc., f/k/a Southwestern Bell  
Communications, Inc.),

Serve:  
The Corporation Company  
120 S. Central Ave.  
Clayton, MO 63105

Defendant.

Case No. 4:09-cv-00015-SWH

JURY TRIAL DEMANDED

**COMPLAINT**

Plaintiffs Rebecca Dernovish and Alex Welch (the “Named Plaintiffs”), individually and on behalf of all others similarly situated, for their Complaint against AT&T Operations, Inc., state and allege as follows:

**Nature of Case**

1. Defendant employs hundreds of people to staff dedicated customer service telephone lines at various call centers in the United States. During the three-year period preceding this action, Defendant required these call center employees to arrive to work early to log into various computer applications to be ready to begin taking calls at the beginning of their paid shift. As such, Defendant received unpaid labor from its employees each day. Plaintiffs seek to recover unpaid overtime wages under the Fair Labor Standards Act (“FLSA”).

## **Jurisdiction and Venue**

2. The FLSA authorizes court actions by private parties to recover damages for violation of the FLSA's wage and hour provisions. Jurisdiction over Plaintiffs and other similarly situated employees' FLSA claims is based on 29 U.S.C. § 216(b) and 28 U.S.C. § 1331.

3. Venue in this district is proper under 28 U.S.C. § 1391(b) and (c), because Defendant does business in this district, operates a call center in this district, and substantial unlawful conduct giving rise to the claims occurred in this district.

## **Parties**

4. Plaintiff Rebecca Dernovish resides in Bonner Springs, Kansas and previously worked at two of Defendant's call center facilities in Kansas City, Missouri. Plaintiff Dernovish brings this lawsuit as a collective action under the FLSA on behalf of herself and all other similarly situated employees employed in Defendant's call centers in the last three years.

5. Plaintiff Alex Welch resides in Oklahoma City, Oklahoma and previously worked at Defendant's call center facility in Oklahoma City, Oklahoma. Plaintiff Welch brings this lawsuit as a collective action under the FLSA on behalf of himself and all other similarly situated employees employed in Defendant's call centers in the last three years.

6. Defendant AT&T Operations, Inc., f/k/a SBC Operations Inc., f/k/a Southwestern Bell Communications, Inc., is a Delaware corporation with its principal place of business located at 530 McCullough, San Antonio, Texas 78205.

## General Allegations

7. The United States Supreme Court recently held that preparatory work duties that are integral and indispensable to the principal work activity are compensable under the FLSA. *See IBP, Inc. v. Alvarez*, 126 S. Ct. 514 (2005). Although *Alvarez* arose in the donning and doffing context in a meat processing plant, its holding is directly applicable to the customer service call centers operated by Defendant.

8. Plaintiffs and similarly situated employees engage in preparatory activities and other related work activities that are integral and indispensable for them to perform their customer service duties. Defendant did not pay its hourly employees who staffed telephones in its call centers for this work time; consequently, these employees consistently worked “off the clock” and without pay. Accordingly, under the holding of *Alvarez*, as well as under consistent rulings and interpretations of the United States Department of Labor, Plaintiff and all similarly situated employees are entitled to compensation for the time spent working before their paid shift.

9. Defendant uniformly denied wages and overtime pay to its employees by requiring them to perform “off the clock” work. Defendant’s deliberate failure to pay employees their earned wages and overtime compensation violates the FLSA.

10. Defendant paid Plaintiffs and its other employees who staffed dedicated customer service telephone lines at its call center facilities on an hourly basis, and classified Plaintiffs and other similarly situated employees as “non-exempt” under the FLSA.

11. Defendant did not accurately record all time worked by its call center employees, and specifically did not include time these employees spent performing integral and indispensable job duties, including logging into various computer applications before the beginning of their paid shift.

12. Defendant required these call center employees to be “ready to work” at the beginning of their scheduled shift. “Ready to work” meant the employee was ready to answer a phone call, including the following tasks: (1) booting up computers; (2) logging on to Defendant’s network; (3) opening relevant computer programs; (4) reviewing any job-related memoranda and/or e-mail; and (5) completing other essential tasks.

13. Defendant did not pay its call center employees to perform these and other integral and indispensable tasks.

14. On information and belief, Defendant adhered to the same policies and practices with respect to its hourly employees who staffed telephone lines at all of its call centers.

15. The net effect of Defendant’s policies and practices, instituted and approved by company managers, is that Defendant willfully failed to pay overtime compensation and willfully failed to keep accurate time records to save payroll costs. Defendant thus enjoyed ill-gained profits at the expense of its hourly employees.

### **Collective Allegations**

16. Plaintiffs bring this case as an “opt-in” collective action under 29 U.S.C. § 216(b) on behalf of all those who file a consent to join form with the Court.

17. Plaintiffs, individually and on behalf of other similarly situated employees, seek relief on a collective basis challenging, among other FLSA violations, Defendant's practice of failing to accurately record, and pay for, all hours worked, including overtime compensation. The number and identity of other plaintiffs yet to opt-in and consent to be party plaintiffs may be determined from Defendant's records, and potential opt-in plaintiffs may easily and quickly be notified of the pendency of this action.

**Count I: Violation of the Fair Labor Standards Act of 1938**

18. Plaintiffs and other similarly situated persons incorporate herein the allegations set forth above.

19. At all times material herein, Plaintiffs and other similarly situated persons have been entitled to the rights, protections, and benefits provided under the FLSA, 29 U.S.C. §§ 201, *et seq.*

20. The FLSA regulates, among other things, the payment of overtime to employees who are engaged in interstate commerce, or engaged in the production of goods for commerce, or employed in an enterprise engaged in commerce or in the production of goods for commerce. 29 U.S.C. § 207(a)(1).

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

22. Defendant violated the FLSA by failing to pay for overtime. In the course of perpetrating these unlawful practices, Defendant also willfully failed to keep accurate records of all hours worked by its employees.

23. Section 13 of the FLSA, codified at 29 U.S.C. § 213, exempts certain categories of employees from overtime pay obligations. None of the FLSA exemptions apply to Plaintiffs or other similarly situated employees.

24. Plaintiffs and all similarly situated employees are victims of a uniform compensation policy. On information and belief, Defendant is applying the same unlawful compensation policy to its hourly employees in all of its call centers.

25. Plaintiffs and all similarly situated employees are entitled to damages equal to the mandated overtime premium pay within the three years preceding the filing of the Complaint, plus periods of equitable tolling, because Defendant acted willfully and knew, or showed reckless disregard for whether its conduct was prohibited by the FLSA.

26. Defendant has not acted in good faith or with reasonable grounds to believe that its actions and omissions were not a violation of the FLSA, and as a result thereof, Plaintiffs and other similarly situated employees are entitled to recover an award of liquidated damages in an amount equal to the amount of unpaid overtime pay permitted by 29 U.S.C. § 216(b). Alternatively, should the Court find Defendant did not act willfully in failing to pay overtime pay, Plaintiffs and all similarly situated employees are entitled to an award of prejudgment interest at the applicable legal rate.

27. As a result of the aforesaid willful violations of the FLSA's overtime pay provisions, overtime compensation has been unlawfully withheld by Defendant from Plaintiffs and all similarly situated employees. Accordingly, Defendant is liable under 29 U.S.C. § 216(b), together with an additional amount as liquidated damages, pre-judgment and post-judgment interest, reasonable attorneys' fees, and costs of this action.

**DEMAND FOR JURY TRIAL**

Plaintiffs hereby request a trial by jury of all issues triable by jury.

**DESIGNATION OF PLACE OF TRIAL**

Plaintiffs designate Kansas City, Missouri as the place for trial.

Respectfully submitted,

**STUEVE SIEGEL HANSON LLP**

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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MISSOURI

**Civil Cover Sheet**

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**Plaintiff** **Rebecca Dernovish ; Alex Welch**  
(s):

**Defendant** **AT&T Operations, Inc.**  
(s):

County of Residence: Outside State of Missouri  
County Where Claim For Relief Arose: Jackson

County of Residence: Outside State of Missouri

Plaintiff's Atty(s):

Defendant's Atty(s):

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II. Basis of Jurisdiction:

**3. Federal Question (U.S. not a party)**

III. Citizenship of Principal

Parties (Diversity Cases Only)

Plaintiff:- N/A  
Defendant:- N/A

IV. Origin : **1. Original Proceeding**

V. Nature of Suit: **710 Fair Labor Standards Act**

VI.Cause of Action: **29 U.S.C. sec. 201 et seq., violation of Fair Labor Standards Act wage laws.**

VII. Requested in Complaint

Class Action:  
Dollar Demand:  
Jury Demand: **Yes**

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**Signature: Lee R. Anderson**

**Date: 1/9/2009**



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Revised: 05/09/06