UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

GREGORY TANKERSLEY, JAMES LABUT LENORE SANTILLI, and SHAWN O'CONNOR, for themselves and those similarly situated

Plaintiffs,

-vs-

AMERITECH PUBLISHING, INC., d/b/a AT&T Advertising Solutions, AT&T Advertising & Publishing, AT&T, White Pages, AT&T Yellow Pages, AT&T Yellow Pages-Michigan, AT&T Directory Operations, and AT&T Yellow Pages-Midwest, a Delaware corporation.

Defendant.

Case No:

CLASS/COLLECTIVE ACTION; COMPLAINT AND DEMAND FOR JURY TRIAL

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Named Plaintiffs and proposed class representatives, GREGORY TANKERSLEY, JAMES LABUT, LENORE SANTILLI, and SHAWN O'CONNOR, by and through their attorneys, Harvey Kruse, P.C., for their Complaint against Defendant, AMERITECH PUBLISHING, INC., d/b/a AT&T Advertising Solutions, *et a*l, state as follows:

PRELIMINARY STATEMENT

1. This class/collective action is brought to recover for damages and injury stemming from violations of the Fair Labor Standards Act of 1938 ("FLSA"), 29 USC. §201, *et seq*, and under the Michigan Minimum Wage Law of 1964 ("MMWL"), MCL 408.381, *et seq*. Plaintiffs and the representative class are current and former call center advertising "Sales Representatives" of Defendant that were misclassified as exempt under a nonqualifying

commission based wage payment system, and were denied the overtime compensation to which they were entitled under the FLSA and MMWL.

JURISDICTION AND VENUE

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

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

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

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

6. The district court has supplemental jurisdiction over all state law claims raised herein pursuant to 28 USC §1367 because such claims do not raise novel or complex issues of state law, and because these state law claims arise from a common nucleus of operative facts with the federal claims, i.e., the claims involve the same parties, arise out of the same unlawful pay practices and involve the same issues of proof as to employee status and misclassification, and are thus so related to the federal claims so as to form part of the same case or controversy under Article III of the United States Constitution.

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

PARTIES

8. Plaintiff GREGORY TANKERSLEY is a citizen of the United States and is a resident of the State of Michigan. He has been employed by Defendant since August 18, 2008. Since that time, he has held the job title of advertising "Sales Representative" at Defendant's call center that, until just recently, was located at 100 E. Big Beaver, in Troy, Michigan. On or about August 15, 2010, the call center and its staff of advertising "Sales Representatives" were relocated to their current location in Southfield, Michigan. Mr. Tankersley's situation is typical of an advertising "Sales Representative" for Defendant, as set forth further herein.

9. Plaintiff JAMES LABUT is a citizen of the United States and is a resident of the State of Michigan. He has been employed by Defendant since June 2007. Since that time, he has held the job title of advertising "Sales Representative" at Defendant's call center that, until just recently, was located at 100 E. Big Beaver, in Troy, Michigan. On or about August 15, 2010, the call center and its staff of advertising "Sales Representatives" were relocated to their current location in Southfield, Michigan. Mr. Labut's situation is typical of an advertising "Sales Representative" for Defendant, as set forth further herein.

10. Plaintiff LENORE SANTILLI is a citizen of the United States and is a resident of the State of Michigan. She has been employed by Defendant since April 2007. Since that time, she has held the job title of advertising "Sales Representative" at Defendant's call center that, until just recently, was located at 100 E. Big Beaver, in Troy, Michigan. On or about August 15,

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2010, the call center and its staff of advertising "Sales Representatives" were relocated to their current location in Southfield, Michigan. Ms. Santilli's situation is typical of an advertising "Sales Representative" for Defendant, as set forth further herein.

11. Plaintiff SHAWN O'CONNOR is a citizen of the United States and is a resident of the State of Michigan. He has been employed by Defendant since March 2008. Since that time, he has held the job title of advertising "Sales Representative" at Defendant's call center that, until just recently, was located at 100 E. Big Beaver, in Troy, Michigan. On or about August 15, 2010, the call center and its staff of advertising "Sales Representatives" were relocated to their current location in Southfield, Michigan. Mr. O'Connor's situation is typical of an advertising "Sales Representative" for Defendant, as set forth further herein.

12. Defendant AMERITECH PUBLISHING, INC., d/b/a AT&T Advertising Solutions, AT&T Advertising & Publishing, AT&T, White Pages, AT&T Yellow Pages, AT&T Yellow Pages-Michigan, AT&T Directory Operations, and AT&T Yellow Pages-Midwest, ("AT&T Advertising Solutions"), is a corporation formed pursuant to the laws of the State of Delaware doing business in the state of Michigan.

13. The proposed class of plaintiffs (hereinafter "class members") consists of current and former employees of AT&T Advertising Solutions, who are/were employed by Defendant as advertising "Sales Representatives", and who are similarly situated to the representative plaintiffs as set forth herein.

GENERAL ALLEGATIONS:
AT&T ADVERTISING SOLUTIONS AND ITS BUSINESS OPERATIONS

14. AT&T Advertising Solutions is the AT&T, Inc. advertising arm that provides directory and publishing operations for AT&T, Inc. AT&T Advertising Solutions has operations

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in various states, including the call center in Southfield Michigan, and services most of the United States.

15. AT&T Advertising Solutions provides various advertising services for its' client companies, including print (Yellow Pages), internet (Yellowpages.com), mobile phone and direct advertising.

16. Upon information and belief, AT&T Advertising Solutions has more than 700 current employees, and approximately 200 of these are advertising "Sales Representatives" working out of the Troy/Southfield call center, like Plaintiffs.

17. AT&T Advertising Solutions employs systemic, unlawful policies and practices of misclassifying as exempt its advertising "Sales Representatives" so as to deny them overtime wages due under the FLSA and MMWL.

18. Defendant fails to pay Plaintiffs and its other advertising "Sales Representatives" sufficient commissions and/or wages so as to satisfy the exemption under Section 7(i) of the FLSA for Employees Paid Commissions by Retail Establishments.

19. These unlawful policies and practices of Defendant which act to deprive advertising "Sales Representatives" the overtime and minimum wages to which they are entitled under the FLSA and MMWL are company-wide.

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

21. AT&T Advertising Solutions is an employer of the named plaintiffs and class members within MCL 408.382.

22. AT&T Advertising Solutions is engaged in interstate commerce and/or is part of an "enterprise" engaged in interstate commerce or the production of goods for commerce, with

gross volume of sales of not less than $500,000 within 29 USC §207. See 29 U.S.C. §§203(r) and (s).

GENERAL ALLEGATIONS: DUTIES AND RESPONSIBILITIES OF PLAINTIFFS AND OTHER ADVERTISING "Sales RepresentativeS"

23. Plaintiffs and class members are current and former employees of AT&T Advertising Solutions within 29 USC §203(e).

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

25. Plaintiffs and the other current advertising "Sales Representatives" for Defendant work in the call center located in Southfield, Michigan. This call center was just recently moved from its longstanding location in Troy, Michigan.

26. Plaintiffs and other advertising "Sales Representatives" work **selling new print or internet advertising** for Defendant. In that regard, they are required to make and receive phone calls, design advertisements, follow-up with clients and secure payment for purchased advertising.

27. For their new advertising sales efforts, Plaintiffs and the other advertising "Sales Representatives" for Defendant are paid a commission. The amount of their commission increases at predetermined marks as a person's total yearly sales increase. At the low end of these so-called "tiers," commissions for new sales are 150 percent of the client company's monthly costs for its advertising. A second "tier" commission is 175 percent. Third "tier" commissions are 200 percent. Fourth "tier" commissions are 250 percent. And Fifth "tier" commissions are 275 percent of a new client's monthly advertising costs.

28. Plaintiffs and the other advertising "Sales Representatives" for Defendant work to **retain existing clients and/or increase advertising for existing client accounts**. In that regard,

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"Sales Representatives" are required to call on existing accounts, address client needs, act as customer service, collect on accounts, propose and sell advertising packages, and prepare a variety of handwritten and electronic paperwork that is necessary to complete the sale.

29. For their efforts to retain clients and/or increase advertising for existing clients, Plaintiffs and the other advertising "Sales Representatives" for Defendant are paid much reduced commissions based on the individuals sales "tier" levels at the time.

30. Plaintiffs and the other advertising "Sales Representatives" for Defendant work to **collect on delinquent accounts**. In that regard, "Sales Representatives" are required to call on overdue accounts, inquire as to the nature of delinquency, and make efforts to secure payment.

31. For their efforts to collect on delinquent advertising accounts, Plaintiffs and the other current advertising "Sales Representatives" for Defendant are paid much reduced commissions based on the individuals sales "tier" levels at the time, but only if the person is able to collect some or all of the delinquent account. If nothing is recovered, then no commission is paid to the "Sales Representative" for his or her efforts.

32. Plaintiffs and the other advertising "Sales Representatives" that work for Defendant have an initial training period of six months. During this time, "Sales Representatives" are paid a heightened base salary of $788 per week. The company does this in an effort to offset the minimal sales, if any, that new advertising "Sales Representatives" are able to generate as they learn on the job. "Sales Representatives" are required to work overtime hours during their training period. However, "Sales Representatives" are not paid any overtime wages during this training period.

33. Commissions are paid to "Sales Representatives" at the time the sale is made.

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34. Plaintiffs and the other advertising "Sales Representatives" for Defendant are subject to regular "charge backs" by Defendant for defaulting accounts. This has been true for at least the last several years, and the company continues that same practice today. A "charge back" situation involves the company taking back, or withholding commissions from new sales or base salary, to offset monies the company did not receive because of a defaulting client. These "charge backs" to the "Sales Representatives" often occur long after the commission was first paid to the "Sales Representative" (i.e., a "charge back" might occur several to many months after the sale, often occurring in a new calendar year). And "charge backs" are often taken at a higher "tier" rate than that at which the "Sales Representative" was operating when the sale was made. Thus, Defendant regularly takes back more money from its "Sales Representatives" then was paid to them in commissions. The net result of Defendant's "charge back" practice is an improper deduction to salary and a loss in total income to "Sales Representatives."

35. These company "charge backs" occur regularly and may account for an individual "Sales Representative" being made to return thousands of dollars of wages, if not more.

36. "Charge backs" are not returned to "Sales Representatives," even if some or the entire outstanding sum is recovered from the defaulting client company through collection efforts.

37. Plaintiffs and the other advertising "Sales Representatives" for Defendant are paid a base wage.

38. During their six months of training, when plaintiffs and other advertising "Sales Representatives" of Defendant are expected to have little by way of sales, they are paid an increased base wage of $788 per week.

39. After a "Sales Representative's" training period ends, his or her base wages drastically decreases. The base wage for the period immediately after training, until two years of employment is $288 per week. After two years, the base wage increases to $333 per week for the next year. At year three, the base wage is $372. At year four, the base wage is $412. And at five years and beyond, the base wage is at the maximum rate of $472 per week.

40. Plaintiffs and the other advertising "Sales Representatives" for Defendant are regularly required to work significant amounts of overtime (i.e., hours more than 40 per week). In that regard, in addition to those items identified above, "Sales Representatives": actively engage in "bird-dogging" after hours and on the weekends; they attend company meetings and participate in additional training efforts; they complete paperwork and pull transaction records at the end of their shifts, as required by Defendant; and they make the 70 daily phone calls to random businesses, again, as required by Defendant. All of these efforts take time. Each of these, and more, is necessary for "Sales Representatives" to have any chance for securing advertising sales and thus earning commissions.

41. Management has repeatedly told Plaintiffs and the other advertising "Sales Representatives" for Defendant that they need to work more than just 40 hours per week. Plaintiffs have been told that "this is not any kind of 8-5 job"; that "if you think you can do this job in 8 hours then you are wrong"; and that "if you want to be successful in this job then you will have to put in the hours."

42. Plaintiffs and the other advertising "Sales Representatives" for Defendant perform their work, including their hours worked in excess of 40, from the call center in Southfield (formerly Troy) and / or at their homes. They do not regularly engage in any kind of "outside sales" efforts.

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43. Plaintiffs and the other advertising "Sales Representatives" for Defendant perform their work, including their hours worked in excess of 40, throughout the workweek and also on the weekends.

44. Plaintiffs and the other advertising "Sales Representatives" for Defendant are knowingly permitted, and regularly encouraged by management to work thru their lunch breaks.

45. Until just recently (within the last few months), Plaintiffs and the other current advertising "Sales Representatives" for Defendant were generally not paid any additional overtime compensation for their hours worked in excess of 40 (on occasion, Defendant would pay some additional compensation for what it had deemed, in advance, to be approved overtime hours).

46. Defendant represented, at a company meeting on May 19, 2010, that it would pay Plaintiffs and the other current advertising "Sales Representatives" overtime compensation for all their hours worked in excess of 40.

47. Defendant has now implemented its new practice for paying overtime to Plaintiffs and the other advertising "Sales Representatives," going forward. Defendant's new practice permits some form of additional compensation for approved time, in excess of 15 minutes.

48. Plaintiffs maintain that even these proposed voluntary payments by Defendant for overtime hours worked after May 19, 2010 are insufficient under the law. And specifically, that such overtime payments are not calculated on all wages earned, including commissions, and further fails to compensate "Sales Representatives" for all hours worked, including partial hours, and thus does not provide Plaintiffs and class members the full benefit to which they are entitled under the law.

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49. The compensation Plaintiffs and the other advertising "Sales Representatives" for Defendant earn does not satisfy Section 7(i) of the FLSA in that: Plaintiffs do not earn 1 ½ the minimum wage for all hours worked; and /or the commissions paid Plaintiffs and the other "Sales Representatives" do not account for 50% of their total earnings.

50. Defendant erroneously relies on the comparatively lofty commissions and earnings of a few individuals at its call center to support its use of Section 7(i) of the FLSA. However, the earnings of these few individuals are not at all indicative of the situation for the vast majority of "Sales Representatives" for Defendant, whose commissions and earnings do not satisfy Section 7(i) of the FLSA.

51. Plaintiffs and other advertising "Sales Representatives" for Defendant are not any kind of "executive" workers under the FLSA and MMWL

52. Plaintiffs and the other advertising "Sales Representatives" for Defendant do not have employees reporting to them.

53. Plaintiffs and the other "Sales Representatives" for Defendant do not have powers to hire, fire, discipline or make other decisions concerning the terms of a person's employment, and any comment, or suggestion they might make on such issues, if considered, would not carry any particular weight.

54. Plaintiff and the other current advertising "Sales Representatives" for Defendant are themselves micromanaged and tightly controlled by Company policy and the supervisors above them.

55. Plaintiff and the other current advertising "Sales Representatives" for Defendant do not possess final authority as to any business matter of even marginal import.

56. Plaintiffs and other advertising "Sales Representatives" for Defendant are not any kind of "administrative" workers under the FLSA and MMWL.

57. Plaintiffs and other advertising "Sales Representatives" for Defendant sell advertisement. Their work does not concern the business operations of Defendant, or its clients.

58. Plaintiffs and other advertising "Sales Representatives" for Defendant do not exercise discretion and independent judgment as to matters of significance.

59. Plaintiff and other advertising "Sales Representatives" for Defendant are required to obtain authorization from their supervisors for even the most minor decisions.

60. Plaintiff and other advertising "Sales Representatives" for Defendant are not permitted to formulate, affect, interpret, or implement management policies or operating practices.

61. Plaintiff and other advertising "Sales Representatives" for Defendant are not permitted to deviate from established company policies and procedures without prior approval.

62. Plaintiff and other advertising "Sales Representatives" for Defendant do not exercise judgment in selecting amongst alternative options.

63. Plaintiffs and other advertising "Sales Representatives" for Defendant are not any kind of "professional" workers under the FLSA and MMWL.

64. Plaintiffs and other advertising "Sales Representatives" for Defendant are not required to have special licensure, or higher education typically obtained in the classroom. Plaintiffs and other advertising "Sales Representatives" for Defendant learn on-the-job, and during their initial six months training period.

65. Plaintiff and other advertising "Sales Representatives" for Defendant are regularly required to work significant amounts of overtime.

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66. Plaintiff and other advertising "Sales Representatives" for Defendant are not traveling sales persons and do not perform any type of "outside sales."

67. Plaintiff and other advertising "Sales Representatives" for Defendant perform non-exempt types of work involving the sale of advertisements.

CLASS/COLLECTIVE ACTION
GENERAL ALLEGATIONS

68. Plaintiffs' FLSA claims are maintainable as a collective action under 29 U.S.C. §216.

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

70. Class Members are defined as:

> All current and former employees of Defendant who are now, or were during some or all of the last three years, working as advertising "Sales Representatives" in the Troy (now Southfield) call center, who worked in excess of 40 hours per week and were classified by Defendant as exempt under the FLSA.

71. Class members include 400-600 current and former advertising "Sales Representatives" of Defendant.

72. Plaintiff and class members are similarly situated within the meaning of 29 U.S.C. §216 in that they were all subjected to the same improper practices and common policies concerning the misclassification of Plaintiffs and class members as exempt from overtime and their commission based wages that do not satisfy Section 7(i) of the FLSA, and/or Defendant's plan of noncompliance with the federal wage laws.

73. The named Plaintiffs fairly and adequately represent the interests of the class members because they are similarly situated to the class members, as set forth above, and

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because their claims are common to, concurrent with and typical of the claims of the class members to this lawsuit.

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

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

76. Common questions of law and fact predominate in this action because the claims of all the class members have at their core the question as to whether Defendant's commission based salary fails the requirements of Section 7(i) of the FLSA, and whether Defendant's failures to pay wages and/or overtime benefits to their nonexempt advertising "Sales Representatives" for their work in excess of 40 hours per week violates the FLSA.

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

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

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

79. Plaintiffs incorporate paragraphs 1-78 above.

80. Plaintiffs and class members regularly worked more than 40 hours per week during their employment with Defendant as advertising "Sales Representatives"."

81. Plaintiffs and class members were not and are not properly classified as "executive", "administrative", "professional", "Outside Sales", or any other exempt class of worker.

82. Plaintiffs and class members were not and are not paid a commission based wage that satisfies Section 7(i) of the FLSA. Since October 2006, the minimum wage for the state of Michigan, currently set at $7.40 per hour, has exceeded the federal minimum wage.

83. Any exemption Defendant might otherwise be able to assert for its "Sales Representatives" is lost because of its actual practice of taking improper deductions from the wages of its "Sales Representatives" by way of its "charge backs" in violation of Michigan Law, including The Michigan Payment of Wages And Fringe Benefits Act, MCL 408.471, et seq., and also 29 CFR 541.603, which provides:

> (a) An employer who makes improper deductions from salary shall lose the exemption if the facts demonstrate that the employer did not intend to pay employees on a salary basis. An actual practice of making improper deductions demonstrates that the employer did not intend to pay employees on a salary basis.
>
> * * *
>
> (b) If the facts demonstrate that the employer has an actual practice of making improper deductions, the exemption is lost during the time period in which the improper deductions were made for employees in the same job classification working for the same managers responsible for the actual improper deductions.

84. Defendant wrongly classifies Plaintiff and class members as exempt to avoid its obligations to pay overtime wages under the FLSA.

85. Defendant has not paid, and refuses to pay, Plaintiffs and class members, overtime compensation at a rate of one and one-half times their regular rate of pay for all hours worked in excess of 40 per week in violation of 29 U.S.C. §207(a)(1).

86. Defendant essentially admitted at its meeting on May 19, 2010 that it had misclassified Plaintiffs and class members, when it agreed to pay them overtime.

87. Defendant's new practice of paying overtime since May 19, 2010 does not afford Plaintiffs and class members the premium rate for overtime based on all wages earned that they are entitled to under the FLSA for all hours, and partial hours, worked in excess of 40 per week.

88. Defendant's failure to pay Plaintiffs and class members their overtime and/or other wages owed them under the FLSA was and continues to be deliberate and willful.

89. Defendant has not acted in good faith in failing to pay Plaintiffs and class members the overtime and other wages owed them under the FLSA, and did not have "reasonable grounds" to believe that their conduct in so doing was in accordance with the law.

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

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

WHEREFORE, Plaintiffs, Gregory Tankersley, James Labut, Lenore Santilli, and Shawn O'Connor, demand judgment against defendant Ameritech Publishing, Inc., d/b/a AT&T Advertising Solutions, in favor of them and class members for the following relief:

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

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(b) A declaration from this Court as to the unlawful pay practices and policies discussed herein and an order restraining Defendant from engaging in the aforementioned pay violations;

(c) A determination of a violation of the FLSA and failure to pay overtime as required by 29 USC 207(a)(1), and an award of the value of Plaintiffs' and class members' unpaid overtime wages and other employee benefits from 2 years before the filing of a person's Consent form, pursuant to 29 USC 255;

(d) A determination of a willful violation and an award of the value of Plaintiffs' and class members' unpaid overtime wages and other employee benefits from 3 years before the filing of a person's Consent form, pursuant to 29 USC 255;

(e) An award of an equal amount of liquidated damages as provided under the section 216 of the FLSA;

(f) An award of attorneys' fees and costs pursuant to section 216 of the FLSA, and/or other applicable law;

(g) An award of pre and post judgment interest;

(h) An award of such additional relief as this Court may deem appropriate.

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

92. Plaintiffs incorporate paragraphs 1 through 91 above.

93. Michigan Compiled Laws §408.383 provides:

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

94. MCL §408.384a provides in part:

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

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

95. MCL 408.393 provides in part:

> Sec. 13. (1) If any employer violates this act, the employee affected by the violation, at any time within 3 years, may:
>
> (a) Bring a civil action for the recovery of the difference between the amount paid and the amount that, but for the violation, would have been paid the employee under this act and an equal additional amount as liquidated damages together with costs and such reasonable attorney's fees as may be allowed by the court.

96. Plaintiffs and class members regularly worked more than 40 hours per week during their employment with defendants as advertising “Sales Representatives”.”

97. Plaintiffs and class members were not and are not properly classified as "executive", "administrative", "professional", “Outside Sales”, or any other exempt class of worker.

98. Plaintiffs and class members were not and are not paid a commission based wage that satisfies Section 7(i) of the FLSA. Since October 2006, the minimum wage for the state of Michigan, currently set at $7.40 per hour, has exceeded the federal minimum wage.

99. Any exemption Defendant might otherwise be able to assert for its “Sales Representatives” is lost because of its actual practice of taking improper deductions from the wages of its “Sales Representatives” by way of its “charge backs” in violation of Michigan Law, including The Michigan Payment of Wages And Fringe Benefits Act, MCL 408.471, et seq.,

100. Defendant wrongly classifies Plaintiff and class members as exempt to avoid its obligations to pay overtime wages under the MMWL.

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101. Defendant has not paid, and refuses to pay, Plaintiffs and class members, overtime compensation at a rate of one and one-half times their regular rate of pay for all hours worked in excess of 40 per week in violation of MCL 408.384a.

102. Defendant essentially admitted at its meeting on May 19, 2010 that it had misclassified Plaintiffs and class members, when it agreed to pay them overtime.

103. Defendant's new practice of paying overtime since May 19, 2010 does not afford Plaintiffs and class members the premium rate for overtime based on all wages earned that they are entitled to under the MMWL, for all hours, and partial hours, worked in excess of 40 per week.

104. Defendant has failed to keep and preserve time records as required by MCL 408.391 and has therefore deprived Plaintiffs and class members the records that would most easily prove the overtime hours worked and compensation due.

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

WHEREFORE, Plaintiffs, Gregory Tankersley, James Labut, Lenore Santilli, and Shawn O'Coonor, demand judgment against defendant Ameritech Publishing, Inc., d/b/a AT&T Advertising Solutions, in favor of them and class members for the following relief:

(a) Certification pursuant to Rule 23 and Court approved notice to class members;

(b) A declaration from this Court as to the unlawful pay practices and policies discussed herein and an order restraining Defendant from engaging in the aforementioned pay violations;

(c) An award of the value of Plaintiffs' and class members' unpaid overtime wages and other employee benefits dating back 3 years;

(d) An award of an equal amount of liquidated damages as provided under the section 13 of the MMWL;

(e) An award of attorneys' fees and costs pursuant to section 13 of the MMWL, and/or other applicable law;

(f) An award of pre and post judgment interest; and

(g) An award of such additional relief as this Court may deem appropriate.

HARVEY KRUSE, P.C.

By: /s/ Dale R. Burmeister

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TRIAL BY JURY

Plaintiffs further demand a trial by jury on their and class members' claims against Defendant.

HARVEY KRUSE, P.C.

By: /s/ Jason R. Mathers

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