

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA**

CYNTHIA ALLEN, individually and)
on behalf of others similarly situated,)
))
Plaintiff,)
v.)
))
AT&T MOBILITY SERVICES LLC)
a/k/a AT&T MOBILITY LLC and)
AT&T SERVICES, INC.,)
))
Defendants.)

Civil No. 1:18-cv-03730-WMR

AMENDED CLASS ACTION COMPLAINT

Plaintiff Cynthia Allen brings this action against AT&T Mobility Services LLC a/k/a AT&T Mobility LLC (“AT&T Mobility” or “Mobility”) and AT&T Services, Inc. (“AT&T Services”) (collectively “AT&T” or “the Company”) on behalf of herself and others similarly situated for violations of Title VII of the Civil Rights Act of 1964 (“Title VII”), as amended by the Pregnancy Discrimination Act (“PDA”), 42 U.S.C. § 2000e *et seq.* Ms. Allen also brings individual claims under the Family and Medical Leave Act (“FMLA”), 29 U.S.C. § 2601 *et seq.*, and the Americans with Disabilities Act (“ADA”), 42 U.S.C. § 12101 *et seq.*

In support of her Class Action Complaint, Ms. Allen alleges and states the following:

NATURE OF THE ACTION

1. Pregnancy is a fact of life for employers and employees alike. Almost 85 percent of women will have one or more pregnancies during their careers. *See Fertility of Women in the United States: 2016*, Table 6, “Completed Fertility for Women 40 to 50 Years Old by Selected Characteristics: June 2016,” U.S. Census Bureau, https://www.census.gov/data/tables/2016/demo/fertility/women-fertility.html#par_list_57 (last visited Jan. 23, 2019). Pregnancy comes with numerous symptoms that can interfere with work or become disabling, including “morning

sickness,” which affects the vast majority of pregnant women at some point during their pregnancies. *See* Am. Coll. of Obstetricians & Gynecologists, *Nausea & Vomiting of Pregnancy*, ACOG Practice Bulletin, No. 189, Jan. 2018, at 1. And even an uncomplicated pregnancy requires regular doctor’s visits, at increasing frequency as the pregnancy progresses. *See* “Pregnancy week by week: Second Trimester, Third Trimester,” Mayo Clinic (Dec. 22, 2018) <https://www.mayoclinic.org/healthy-lifestyle/pregnancy-week-by-week/basics/healthy-pregnancy/hlv-20049471> (last visited Jan. 23, 2019). But research estimates that over 250,000 women per year are denied the workplace accommodations they need for their pregnancies, including excused absences for medical care. *See* “Listening to Mothers: The Experiences of Expecting and New Mothers in the Workplace,” Nat’l P’ship for Women & Families, at 3 (Jan. 2014), <http://www.nationalpartnership.org/our-work/resources/workplace/pregnancy-discrimination/listening-to-mothers-experiences-of-expecting-and-new-mothers.pdf> (last visited Jan. 23, 2019).

2. Congress has recognized that “discrimination against pregnant women is one of the chief ways in which women’s careers have been impeded and women employees treated like second-class employees,” and it sought to remedy this

endemic discrimination by enacting the PDA to amend Title VII. 123 Cong. Rec. 10,527 (1977) (statement of Rep. Hawkins).

3. Notwithstanding these efforts, during her employment with Defendant AT&T Mobility, Plaintiff Cynthia Allen experienced precisely the type of pregnancy-related discrimination that the PDA sought to remedy.

4. Specifically, Ms. Allen faced discrimination and suffered adverse employment consequences (including, ultimately, termination) when AT&T refused—pursuant to its Sales Attendance Guidance (“SAG”) policy—to “excuse” the absences, late arrivals, and early departures she requested for pregnancy, childbirth, and related medical conditions.

5. AT&T’s SAG policy—which applied to Ms. Allen and continues to apply to non-exempt, non-managerial employees in AT&T Mobility stores nationwide—imposes a “point” or a fraction of a “point” for unexcused absences, late arrivals, or early departures from work. Once an employee’s point total exceeds a certain threshold, she is subject to termination.

6. Although the SAG policy excuses absences, late arrivals, or early departures in thirteen delineated situations—including “Approved leave of absence,” “Approved Short Term Disability,” “Approved Job Accommodations,” and “Federal/State/Municipal mandated Leaves (i.e., FMLA, ADAAA, etc.),” *see*

infra ¶ 25—pregnancy, childbirth, or related medical conditions are not among this extensive list. Nor are pregnancy, childbirth, or related medical conditions mentioned anywhere else in the SAG policy.

7. AT&T’s Centralized Attendance Group (“CAG”, comprised of AT&T Mobility employees), and/or, upon information and belief, personnel in AT&T’s Human Resources (“HR”) Department administer the SAG policy and decide whether to impose points under the policy.

8. Pursuant to the SAG policy, AT&T assigned points to Ms. Allen for the absences, late arrivals, and early departures she required for her pregnancy, childbirth, and related medical conditions. But, upon information and belief, other individuals who were similar in their ability or inability to work were not assigned points for non-pregnancy-related absences, late arrivals, and early departures.

9. AT&T’s refusal to excuse absences, late arrivals, and early departures related to pregnancy, childbirth, or related medical conditions punishes employees who require absences for those protected reasons.

10. AT&T’s SAG policy and its attendance practices thereunder therefore have a disparate impact on and constitute disparate treatment of women affected by pregnancy, childbirth, or related medical conditions, in violation of Title VII (as amended by the PDA).

11. Consequently, Ms. Allen brings Title VII claims on behalf of herself and all non-exempt, non-managerial female employees in AT&T's corporate stores nationwide whose absences for pregnancy, childbirth, or related medical conditions at any time from April 26, 2017 to the present were not excused under AT&T's SAG policy.

12. Ms. Allen further brings an individual claim under the ADA for AT&T's failure to provide reasonable accommodations for her pregnancy-related disabilities and an individual claim under the FMLA for AT&T's interference with and retaliation against her for exercising her right to obtain intermittent leave needed for pregnancy-related care and to care for her newborn son, who had a serious medical condition.

JURISDICTION AND VENUE

13. This Court has jurisdiction over this matter pursuant to 42 U.S.C. § 2000e-5(f)(3) and 28 U.S.C. § 1331.

14. Venue is proper in this District under 28 U.S.C. § 1391 and 42 U.S.C. § 2000e-5(f)(3) because both Defendants are residents of this District and, upon information and belief, the discriminatory employment decisions both Defendants made pursuant to the SAG policy occurred within this District.

PARTIES

15. Plaintiff Cynthia Allen is a woman and a resident and citizen of Las Vegas, Nevada. From approximately December 2012 through April 2017, Ms. Allen was an employee of AT&T Mobility in its retail stores located at 2540 Broadway, 30 Rockefeller Plaza, and 16 W. 34th Street in New York City and 920 South Rampart Boulevard in Las Vegas, Nevada.

16. AT&T Mobility is a limited liability corporation organized under the laws of Delaware, with its principal place of business in Atlanta, Georgia. AT&T Mobility is a subsidiary of AT&T, Inc. On information and belief, at all relevant times, AT&T Mobility was engaged in commerce or an industry affecting commerce within the meaning of the FMLA, employed in excess of 50 employees during each of 20 or more calendar workweeks, and was an “employer” within the meaning of Title VII (as amended by the PDA) and the FMLA.

17. AT&T Services, Inc. is a shared services company incorporated under the laws of Delaware, with its principal place of business in Dallas, Texas. Since 2000, AT&T Services (formerly SBC Services, Inc.) has held a Certificate of Authority to Transact Business in Georgia, issued by the Georgia Secretary of State. AT&T Services is a subsidiary of AT&T, Inc. As a shared services company, AT&T Services provides—among other services—legal and employee

attendance policy expertise to the AT&T family of companies, including, upon information and belief, AT&T Mobility. On information and belief, at all relevant times, AT&T Services was engaged in commerce or an industry affecting commerce within the meaning of the FMLA, employed in excess of 50 employees during each of 20 or more calendar workweeks, and was an “employer” within the meaning of the FMLA.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

18. On February 20, 2018, Ms. Allen filed a timely charge of discrimination with the Equal Employment Opportunity Commission (“EEOC”), alleging that AT&T engaged in sex, pregnancy, and disability discrimination, as well as retaliation, in violation of Title VII (as amended by the PDA) and the ADA. Ms. Allen’s charge included class-wide allegations.

19. Ms. Allen requested her Right to Sue letter from the EEOC on April 30, 2018. She received that letter on May 7, 2018.

20. Ms. Allen timely filed her initial Complaint on August 3, 2018. Following the conclusion of a stay in these proceedings, the parties agreed that efficiency is best served by permitting Ms. Allen to file an amended complaint before Defendants submit their answer or other responsive pleadings. *See* Status Report, Dkt. 11. This Amended Complaint is timely filed pursuant to the parties’

agreement.

FACTS GIVING RISE TO THIS ACTION

A. AT&T's ATTENDANCE POLICY

21. AT&T maintains a Sales Attendance Guidance (“SAG”) policy that governs the attendance policies and procedures for non-exempt, non-managerial AT&T Mobility employees in all Mobility-owned retail stores nationwide. Upon information and belief, AT&T maintained such an attendance policy for the duration of Ms. Allen’s employment with the Company and continues to maintain such a policy.

22. Under this policy, AT&T assigns a “point” or a fraction of a point to an employee who is absent, arrives late, or departs early. Sales associates retain points they have incurred for approximately twelve months.

23. After an employee receives approximately four points, AT&T may limit her ability to transfer to another store or be promoted. Upon information and belief, after approximately seven points, the Company may put her on “final notice.” And, upon information and belief, AT&T may terminate an employee after approximately eight points, as determined by the Company in its sole discretion.

24. AT&T's policy states that absences, early departures, or late arrivals may be excused only if they fall within a specified set of categories, limited to the following:

- Approved leave of absence
- Scheduled/Approved vacation
- Jury Duty
- Qualified bereavement
- Military Leave
- Company recognized Holidays (unless scheduled to work on a Holiday)
- Approved Short Term Disability
- Approved Job Accommodations
- Federal/State/Municipal mandated Leaves (i.e., FMLA, ADAAA, etc.)
- Company initiated closings (i.e. inclement weather, etc.)
- Contracted time off (Union business)
- Court subpoena (excused to extent as outlined per Labor Agreement)
- Approved/Company Mandated Time Off (i.e., EWP, vacation, disciplinary time, etc.)

25. Pregnancy, childbirth, or related medical conditions are not among the thirteen delineated situations for which the SAG policy excuses absences, late arrivals, or early departures. Nor are pregnancy, childbirth, or related medical conditions mentioned anywhere else in the SAG policy.

26. The inclusion of FMLA leave and other governmentally mandated leave as bases for excused absences in the SAG policy is insufficient to absolve AT&T of liability under the PDA, since the protections provided by the FMLA and

other government-mandated leave are not coterminous with the protections provided by the PDA.

27. The SAG policy further requires that employees report absences or other needed schedule changes to AT&T at least one hour before their shift.

28. If an employee accrues a specified number of points within a twelve-month period, for “any unscheduled time away” from their shift “regardless of reason,” the SAG policy mandates “termination absent extraordinary circumstances as determined by the Company in its sole discretion.”

29. Upon information and belief, AT&T’s CAG and/or HR Department administers the SAG policy out of AT&T Mobility’s headquarters in Atlanta, Georgia and determines whether an employee’s time out of work will be “excused.”

B. CYNTHIA ALLEN

30. Ms. Allen worked for AT&T from approximately December 2012 until late April 2017, when she was terminated because her accrued-points balance allegedly violated the SAG policy.

31. Ms. Allen worked in several AT&T stores in New York City, including those located at 2540 Broadway, 30 Rockefeller Plaza, and 16 W. 34th Street (the “Empire State Building Store”). In September 2016, she transferred to

the store located at 920 South Rampart Blvd., Las Vegas, Nevada (the “Las Vegas Store”), where she worked for the rest of her tenure with AT&T.

32. In New York, Ms. Allen began as a Sales Support Representative and was promoted to Retail Sales Consultant and then Team Lead/Retail Sales Consultant. In these roles, she was responsible for selling cellphones, tablets, and cell and data plans; greeting customers; performing some back-office functions; and—as Team Lead—opening and closing the store and supervising other Retail Sales Consultants.

33. Ms. Allen performed well in these roles, had good relationships with her store managers and coworkers, and received positive reviews.

34. While working for AT&T, Ms. Allen became pregnant three times; all of her pregnancies were high risk, and her first two pregnancies resulted in miscarriages.

35. During her first two pregnancies, under a prior version of the SAG policy, she sought assistance in obtaining excused leave for her pregnancy and related doctors’ visits from her store managers, who provided her with paperwork from AT&T and instructed her to submit that paperwork to AT&T. Ms. Allen submitted the required paperwork and received excused leave for her pregnancy-related medical needs.

36. In March 2016, while an employee at the Empire State Building Store, Ms. Allen learned that she was pregnant for the third time. During this pregnancy, Ms. Allen suffered from hyperemesis gravidarum (extreme and constant morning sickness that prevented her from eating and staying sufficiently hydrated) and placenta previa (a condition where the placenta covers the cervix and can require an emergency caesarian section). Both conditions were acute, requiring ongoing and emergency medical care and restricting her ability to work. Those conditions also qualified as “disabilities” within the meaning of the ADA.

37. Ms. Allen had to take several days off in each month from April through September 2016 to treat these conditions. She followed the same procedures for obtaining excused absences that she had used during her prior two pregnancies. AT&T never informed her of any points accruing for her pregnancy-related absences.

38. In September 2016, Ms. Allen left New York and transferred to the Las Vegas store as a Retail Sales Consultant; Ms. Allen believed her points balance at that time was around three (as many pregnancy-related leave requests filed during the first six months of her pregnancy had not yet been processed and remained pending in AT&T’s system), which was low enough to permit her transfer under AT&T’s policy.

39. After her transfer to the Las Vegas Store, Ms. Allen continued to experience pain and other debilitating conditions arising from her pregnancy and related disabilities, requiring treatment at the hospital emergency room five to ten times in or around October and November 2016 for Braxton-Hicks contractions, ligament pain, difficulty breathing, and other conditions related to her pregnancy.

40. Ms. Allen was unable to secure either excused absences or information about FMLA leave from AT&T while in Las Vegas. Her store manager, Rick Church, was unable to help her with either of these matters, even after she requested his assistance. Instead, AT&T assigned Ms. Allen additional points for these absences, which ultimately led to her termination.

41. Despite Ms. Allen having informed the Company about her pregnancy and related medical conditions, including her pregnancy-related disabilities, AT&T took no steps to initiate discussions with Ms. Allen about reasonable accommodations for her pregnancy or disabilities or about her FMLA rights.

42. Ultimately, Ms. Allen was forced to take unpaid leave from approximately Thanksgiving 2016 until her son was born on December 8, 2016, when she began her maternity leave.

43. Mr. Church informed Ms. Allen that, under AT&T's policies, she would have to speak with Integrated Disability Services Center, a third party that

managed AT&T's disability leave, to obtain FMLA or disability coverage for the leave she took before giving birth. Ms. Allen was unable to obtain leave from AT&T through this process. Upon information and belief, AT&T instead assigned Ms. Allen points for the dates for which she had sought FMLA and/or disability leave from the Company.

44. Ms. Allen returned to work on February 8, 2017. At that time, Mr. Church informed her that AT&T had placed her on a "final notice" because she had accumulated over twenty unexcused-absence points. Ms. Allen believed these absences—many of which occurred while she was in New York and were later deemed unexcused while she was on leave—had been classified as FMLA leave and thus excused by AT&T.

45. When Ms. Allen questioned him about these points, Mr. Church stated that he had no control over the points assigned to her and that there was nothing he could do. Instead, he explained that AT&T had control over any points she received.

46. Ms. Allen sought assistance from AT&T's HR Department and CAG, but AT&T refused to change the points decisions they had reached under the SAG policy and declined to explain to her how it had issued so many points of which she had been unaware.

47. Instead, Ms. Allen was informed that points could be removed only with the approval of AT&T's corporate Area Manager, Ltanya Robnett. Ms. Robnett was unable to remove the points, but she agreed to speak further with HR about Ms. Allen's situation. Ms. Allen never received any further response or information from Ms. Robnett.

48. Ms. Allen also sought assistance from a corporate employee named Brittany, whom Ms. Allen was informed had authority over attendance and FMLA issues. Although Ms. Allen tried to contact Brittany two to three times by phone and one to two times by email (including an email to Brittany's supervisor), Brittany did not respond to Ms. Allen's requests for assistance.

49. On or around March 21 and 22, 2017, Ms. Allen's newborn son required emergency medical care. Mr. Church agreed in a text message to take Ms. Allen off the store's schedule for that day, but he informed her that he could not assist with securing FMLA leave for the absence; instead, he directed her to AT&T's MyWorkLife application (the "app"), which was promulgated and managed by AT&T above the store level. But the app did not work, and Mr. Church did not have other suggestions for requesting leave from the company. Indeed, in Ms. Allen's experience, the app never worked for FMLA leave requests, and Ms. Allen was unaware of any other avenues to petition AT&T for FMLA

leave.

50. When she returned to work later on March 22, Ms. Allen learned that she had not been removed from the store's schedule during her son's illness, and that AT&T had instead issued points for her absences. These points remained in place even though Ms. Allen provided documentation from her son's doctor confirming the hospitalization.

51. Ms. Allen's son again required emergency medical care on or around March 31, 2017. Ms. Allen contacted Mr. Church to be removed from the shift and provided him with documentation. Ms. Allen returned to work the following day, on or around April 1, 2017.

52. Throughout this period, Ms. Allen continued to follow up with Ms. Robnett and other AT&T corporate employees concerning the points she received for absences she believed should have been excused. She received no assistance from the Company.

53. Three weeks after her son's second emergency room visit, Ms. Allen was terminated due to excessive absences, including those relating to her child's care and notwithstanding the fact that virtually all of her absences were pregnancy, disability, and/or FMLA-related.

CLASS ACTION ALLEGATIONS

54. Pursuant to Federal Rule of Civil Procedure 23, Ms. Allen brings claims for AT&T's violation of Title VII (as amended by the PDA).

55. Ms. Allen brings these claims on behalf of herself and all non-exempt, non-managerial female employees in AT&T's corporate retail stores nationwide whose absences for pregnancy, childbirth, or related medical conditions at any time from April 26, 2017 to the present were not excused under AT&T's Sales Attendance Guidance policy.

56. Ms. Allen asserts the following class-wide violations of Title VII:

a. AT&T's SAG policy and practices impose a disparate impact on women affected by pregnancy, childbirth, or related medical conditions; and

b. AT&T's actions also constitute disparate treatment and evince discriminatory intent when the Company failed to include pregnancy, childbirth, or related medical conditions in its SAG policy as conditions warranting exemption from point accrual, despite enumerating thirteen other reasons for excused absences.

57. The proposed class is easily ascertainable. The number and identity of class members may be determined from AT&T's records.

58. The proposed class also meets all the requirements of Rule 23(a) and (b)(3):

a. Numerosity: Upon information and belief, the proposed class is at least several hundred individuals. This class size is so numerous that joinder of all class members is impracticable. In addition, the disposition of these individuals' claims as a class will benefit both the parties and the Court.

b. Commonality: Ms. Allen and the members of the proposed class she seeks to represent have all been harmed by AT&T's SAG policy in that they have received points, discipline, and/or been terminated because of their sex (pregnancy). The common questions in this case include, but are not limited to:

i. Whether AT&T's SAG policy and/or its attendance practices treated (and continue to treat) pregnancy, childbirth, and related medical conditions differently from other absences in violation of Title VII (as amended by the PDA);

ii. Whether AT&T's SAG policy and/or its attendance practices were and are justified by business necessity;

iii. Whether there exist(ed) less discriminatory alternatives

that could equally serve any business necessity promoted by the SAG policy and/or AT&T's attendance practices;

iv. Whether AT&T's SAG policy and/or its attendance practices had (and continue to have) a disparate impact on pregnant women; and

v. Whether AT&T's SAG policy and/or its conduct relating to that policy was and is malicious or in reckless indifference to Plaintiff's and the putative class members' legal rights.

c. Typicality: Ms. Allen and the members of the proposed class have been subject to the same unlawful policies, practices, and procedures and thus have suffered similar harms. All putative class members have been subject to AT&T's SAG policy and all have experienced adverse employment consequences from absences due to pregnancy, childbirth, and related medical conditions. Ms. Allen's claims therefore are typical of the claims that could be brought by any member of the class, and the relief sought is typical of the relief that could be sought by any member of the class in a separate action.

d. Adequacy of Representation: Ms. Allen is able to fairly and adequately protect the interests of all members of the class, as she is

challenging the same policy and practices as the class as a whole, and there are no known conflicts of interest between Ms. Allen and the members of the proposed class. Ms. Allen has retained counsel who are experienced and competent in employment discrimination claims and in complex class-action litigation.

e. **Predominance and Superiority:** The common questions identified above predominate over any individual issues. A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all class members is impracticable. Class action treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the necessary duplication of effort and expense that numerous individual actions engender. Because the losses, injuries, and damages suffered by each of the individual class members are small in the sense pertinent to class action analysis, the expense and burden of individual litigation would make it extremely difficult or impossible for the individual class members to redress wrongs done to them.

f. At the same time, important public interests will be served by addressing the matter as a class action. Prosecution of separate actions by

individual members of the proposed class would create a risk of inconsistent and/or varying adjudications, establishing incompatible standards of conduct for AT&T and resulting in the impairment of class members' rights and the disposition of their interests through actions to which they were not parties. The issues in this action can be decided by means of common, class-wide proof. In addition, if appropriate, the Court can and is empowered to fashion methods to efficiently manage this action as a class action.

g. Pursuit of this action on behalf of a class will provide the most efficient mechanism for adjudicating the claims of Ms. Allen and the members of the proposed class.

FIRST CAUSE OF ACTION
Title VII, 42 U.S.C. §§ 2000e-2(a), 2000e(k)
Disparate Impact Because of Sex (Pregnancy)
On Behalf of Plaintiff Cynthia Allen and the Putative Class

59. Ms. Allen realleges and incorporates by reference, as if fully set forth herein, each and every allegation of this Complaint.

60. Upon information and belief, AT&T's SAG policy—which permits the Company to excuse absences for thirteen different reasons, including approved short-term disability; approved job accommodations; and leave protected by the FMLA, ADAAA, and other relevant federal, state, and municipal laws, but which

does not mention pregnancy, childbirth, or related medical conditions and does not define what constitutes a permissible job accommodation—has a disparate impact on women who request excuses for absences due to pregnancy, childbirth, or related medical conditions, in violation of Title VII of the Civil Rights Act of 1964 (as amended by the PDA).

61. This disparate impact was not and is not justified by any business necessity or, if it could be so justified, less discriminatory alternatives exist that could equally serve the putative business necessity.

62. As a result of AT&T's unlawful sex discrimination, Ms. Allen and the class she seeks to represent have suffered significant monetary loss, including loss of earnings, backpay, and other benefits; emotional pain and suffering; and other nonpecuniary losses.

SECOND CAUSE OF ACTION
Title VII, 42 U.S.C. §§ 2000e-2(a), 2000e(k)
Disparate Treatment Because of Sex (Pregnancy)
On Behalf of Plaintiff Cynthia Allen and the Putative Class

63. Ms. Allen realleges and incorporates by reference, as if fully set forth herein, each and every allegation of this Complaint.

64. Upon information and belief, AT&T intentionally discriminated against Ms. Allen and the putative class members by creating and applying a

policy that treated them differently from non-pregnant employees in their ability to obtain leave and/or accommodations for their pregnancy, childbirth, or related medical conditions, in violation of Title VII (as amended by the PDA).

65. Upon information and belief, AT&T had and continues to have a regular policy or procedure of unlawfully discriminating against women on the basis of their pregnancy, childbirth, or related medical conditions. As a result of AT&T's unlawful sex discrimination, Ms. Allen and the class she seeks to represent have suffered significant monetary loss, including loss of earnings, backpay, and other benefits; emotional pain and suffering; and other non-pecuniary losses.

66. As a result of AT&T's malice or reckless indifference to the rights of its pregnant employees under the PDA, Ms. Allen and the class she seeks to represent also request punitive damages.

THIRD CAUSE OF ACTION
Title I of the ADA, 42 U.S.C. §§ 12112(a), (b);
29 C.F.R. §§ 1630.2(o), 1630.4, 1630.9
Failure to Provide a Reasonable Accommodation
On Behalf of Plaintiff Cynthia Allen

67. Ms. Allen realleges and incorporates by reference, as if fully set forth herein, each and every allegation of this Complaint.

68. AT&T discriminated against Ms. Allen, an otherwise qualified individual with a disability, because of her known disability by failing to provide her with reasonable accommodations that were available and that did not pose undue hardship, in violation of the ADA.

69. AT&T failed to engage in an interactive process with Ms. Allen to identify the limitations resulting from her disability and potential accommodations that could overcome those limitations.

70. AT&T's SAG policy further discriminated against Ms. Allen in violation of the ADA by failing to provide for leave or other reasonable accommodations related to her ADA-covered disabilities.

71. As a result of AT&T's unlawful disability discrimination, Ms. Allen has suffered significant monetary loss, including loss of earnings and other benefits; emotional pain and suffering; and other nonpecuniary losses.

72. AT&T's unlawful disability discrimination was undertaken either with malice or with reckless indifference to Ms. Allen's rights under the law.

FOURTH CAUSE OF ACTION
FMLA, 29 U.S.C. §§ 2601 *et seq.*
Interference
On Behalf of Plaintiff Cynthia Allen

73. Ms. Allen realleges and incorporates by reference, as if fully set forth

herein, each and every allegation of this Complaint.

74. Ms. Allen was an “eligible employee” within the meaning of the FMLA.

75. AT&T violated the FMLA by unlawfully interfering with, restraining, or denying the exercise of Ms. Allen’s FMLA rights by, *inter alia*, discouraging her from taking leave, imposing unnecessary and burdensome obstacles on her ability to request and access the leave, denying her the ability to use that leave, and awarding points—up to and including termination—for using that leave.

76. As a result of AT&T’s unlawful conduct in violation of the FMLA, Ms. Allen has suffered harm for which she is entitled to damages in the form of past and future lost income, benefits, and promotional opportunities.

77. AT&T’s unlawful actions constitute bad faith and were malicious, willful, and wanton violations of the FMLA for which Ms. Allen is entitled to an award of liquidated damages.

FIFTH CAUSE OF ACTION
FMLA, 29 U.S.C. §§ 2601 *et seq.*
Retaliation
On Behalf of Plaintiff Cynthia Allen

78. Ms. Allen realleges and incorporates by reference, as if fully set forth herein, each and every allegation of this Complaint.

79. Ms. Allen was an “eligible employee” within the meaning of the FMLA.

80. AT&T violated the FMLA by unlawfully retaliating against Ms. Allen for exercising her FMLA rights by, *inter alia*, refusing to credit qualifying absences as intermittent leave and instead penalizing her with “points,” resulting in her discharge.

81. As a result of AT&T’s unlawful conduct in violation of the FMLA, Ms. Allen has suffered harm for which she is entitled to damages in the form of past and future lost income, benefits, and promotional opportunities.

82. AT&T’s unlawful actions constitute bad faith and were malicious, willful, and wanton violations of the FMLA for which Ms. Allen is entitled to an award of liquidated damages.

PRAYER FOR RELIEF

For the foregoing reasons, Ms. Allen respectfully requests that the Court grant the following relief:

- A. Declaratory relief, including but not limited to a declaration that AT&T violated Title VII (as amended by the PDA), the ADA, and the FMLA;
- B. Injunctive relief, including but not limited to revision of AT&T’s

attendance policies to comply with Title VII (as amended by the PDA), the ADA, and the FMLA;

- C. Compensation for loss of income;
- D. Compensatory and consequential damages, including for emotional distress;
- E. Punitive damages;
- F. Liquidated damages,
- G. Pre-judgment and post-judgment interest at the highest lawful rate;
- H. Costs incurred, including reasonable attorneys' fees to the extent allowable by law; and
- I. Such other relief as the Court deems just and proper.

JURY DEMAND

Ms. Allen demands a jury trial on the matters alleged herein.

Dated: January 25, 2019

Respectfully submitted,

/s/ Kalpana Kotagal

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**pro hac vice*

CERTIFICATE OF SERVICE

I hereby certify that, on January 25, 2019, a copy of the foregoing “First Amended Complaint” was filed electronically. Notice of this filing will be sent to all parties of record by operation of the Court’s Electronic Filing System.

/s/ Kalpana Kotagal
Kalpana Kotagal