

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

)
CYNTHIA ALLEN and KRISTINE)
WEBB, on behalf of themselves)
and others similarly situated,)
)
Plaintiffs,)
v.)
)
AT&T MOBILITY SERVICES LLC,)
)
Defendants.)
)

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

SECOND AMENDED CLASS ACTION COMPLAINT

Plaintiffs Cynthia Allen and Kristine Webb bring this action against AT&T Mobility Services LLC (“AT&T Mobility” or “Mobility” or the “Company”) on behalf of themselves 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 and Ms. Webb also bring 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.*, as amended by the ADA Amendments Act of 2008 (“ADAAA”). In support of their Class Action Complaint, Ms. Allen and Ms. Webb allege and state 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_62 (last visited June 14, 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. 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 June 14, 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 June 14, 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 their employment with Defendant

AT&T Mobility, Plaintiffs Cynthia Allen and Kristine Webb experienced precisely the type of pregnancy-related discrimination that the PDA sought to remedy.

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

5. AT&T Mobility’s SAG policy—which applied to Ms. Allen and Ms. Webb 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* ¶ 27—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 Mobility's Centralized Attendance Group ("CAG"), comprised of AT&T Mobility employees, and, upon information and belief, personnel in AT&T Mobility's Human Resources ("HR") Department both administer the SAG policy and decide whether to impose points under the policy.

8. Pursuant to the SAG policy, AT&T Mobility assigned points to Ms. Allen and Ms. Webb for the absences, late arrivals, and early departures they required for pregnancy, childbirth, or 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 Mobility'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 Mobility's SAG policy and its corresponding attendance practices 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 and Ms. Webb bring Title VII claims on behalf of themselves and all non-exempt, non-managerial female employees in

AT&T Mobility 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 Mobility's SAG policy.

12. Ms. Allen further brings an individual claim under the ADA for AT&T Mobility's failure to provide reasonable accommodations for her pregnancy-related disabilities and an individual claim under the FMLA for AT&T Mobility'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.

13. Ms. Webb also brings an individual claim under the ADA for AT&T Mobility's failure to provide reasonable accommodations for her pregnancy-related disabilities and an individual claim under the FMLA for AT&T Mobility interference with and retaliation against her for exercising her right to obtain intermittent leave needed for pregnancy-related care.

JURISDICTION AND VENUE

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

15. Venue is proper in this District under 28 U.S.C. § 1391 and 42 U.S.C. § 2000e-5(f)(3) because Defendant is a resident of this District and, upon

information and belief, the discriminatory employment decisions Defendant made pursuant to the SAG policy occurred within this District.

PARTIES

16. 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.

17. Plaintiff Kristine Webb is a woman and a resident and citizen of Villisca, Iowa. From approximately September 2014 through July 2017, Ms. Webb was an employee of AT&T Mobility in its retail store located at 1325 Eglin Street, Suite 200, in Rapid City, South Dakota.

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

and the FMLA.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

19. On February 20, 2018, Ms. Allen filed a timely charge of discrimination with the Equal Employment Opportunity Commission (“EEOC”), alleging that AT&T Mobility 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.

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

21. 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. The Amended Complaint was timely filed on January 25, 2019, pursuant to the parties’ agreement.

22. Ms. Webb requested her Right to Sue letter from the EEOC on June 5, 2019. She received that letter on June 12, 2019.

23. Ms. Allen requested that the court grant her leave to amend the complaint to add Ms. Webb as a named plaintiff, which the court granted. *See*

Scheduling Order re: Amended Joint Preliminary Report and Discovery Plan, Dkt. 46. AT&T Mobility consented as well. This Second Amended Complaint is timely filed pursuant to the amended discovery plan.

FACTS GIVING RISE TO THIS ACTION

A. AT&T MOBILITY'S ATTENDANCE POLICY

24. AT&T Mobility 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 Mobility maintained such an attendance policy for the duration of Ms. Allen's and Ms. Webb's employment with the Company and continues to maintain such a policy.

25. Under this policy, AT&T Mobility 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.

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

sole discretion.

27. AT&T Mobility'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.)

28. 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.

29. 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 Mobility of liability under the PDA and ADA, since the protections provided

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

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

31. 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.”

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

B. CYNTHIA ALLEN

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

34. Ms. Allen worked in several AT&T Mobility 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 Mobility.

35. 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.

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

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

38. 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 Mobility and instructed her to submit that paperwork to AT&T Mobility. Ms. Allen submitted the required paperwork and received excused leave

for her pregnancy-related medical needs.

39. 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), placenta previa (a condition where the placenta covers the cervix and can require an emergency Caesarian section), and Braxton-Hicks contractions (contractions of the uterus with increasing frequency over time but are not associated with labor). These conditions were acute, requiring ongoing and emergency medical care and restricting her ability to work. Those conditions qualify as “disabilities” within the meaning of the ADA.

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

41. 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, which was low enough to permit her transfer under

AT&T Mobility's policy. She came to learn later that many pregnancy-related leave requests had not yet been processed and remained pending with AT&T Mobility.

42. 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.

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

44. Ultimately, to avoid accruing additional points under the SAG policy, Ms. Allen was forced to begin her unpaid FMLA leave early, from approximately Thanksgiving 2016 until her son was born on December 8, 2016, when she began her maternity leave.

45. Ms. Allen returned to work on February 8, 2017. At that time, her supervisor, Rick Church ("Church"), informed her that AT&T Mobility had placed her on a "final notice" because she had accumulated approximately eighteen

unexcused-absence points. Ms. Allen had understood that AT&T Mobility classified these absences—many of which occurred while she still was in New York and were later deemed unexcused while she was on leave—as FMLA leave and thus excused.

46. When Ms. Allen objected to the new points, Church stated that AT&T Mobility had control over them and that there was nothing he could do.

47. Ms. Allen sought assistance from AT&T Mobility’s CAG and HR Department, but the Company refused to change the points decisions it 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.

48. Instead, AT&T Mobility informed Ms. Allen that points could be removed only with the approval of AT&T Mobility’s Area Manager, Ltanya Robnett (“Robnett”). Ms. Allen called Robnett, who told Ms. Allen that, in fact, she was not able to remove the points, and that the decision rested with AT&T Mobility. Robnett said she would appeal to the HR Department on Ms. Allen’s behalf, but Ms. Allen never heard from her again.

49. Ms. Allen also sought assistance from an AT&T Mobility corporate employee named Brittany, whom Church informed Ms. Allen 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), neither Brittany nor anyone else at AT&T Mobility responded.

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

51. When she returned to work later on March 22, Ms. Allen learned Church had not removed her from the store's schedule during her son's illness after all, and that AT&T Mobility had instead issued points for her absences. Even after Ms. Allen provided documentation from her son's doctor confirming the hospitalization, AT&T Mobility refused to erase the points.

52. Ms. Allen's son again required emergency medical care on or around March 31, 2017. Ms. Allen again contacted Church in advance of her shift and asked

to be removed from the schedule. Ms. Allen returned to work the following day, on or around April 1, 2017, and provided Church with documentation.

53. Throughout this period, Ms. Allen continued to follow up with Robnett and other AT&T Mobility corporate employees objecting to the approximately eighteen points the Company had assessed for absences that should have been excused. She received no assistance from the Company.

54. Three weeks after her son's second emergency room visit, AT&T Mobility terminated Ms. Allen due to allegedly excessive absences, including those relating to her child's medical care and notwithstanding the fact that virtually all of her absences were for pregnancy and related medical conditions, disability, and/or FMLA-qualifying reasons.

C. KRISTINE WEBB

55. Ms. Webb worked for AT&T Mobility from approximately September 2014 until approximately late July 2017, when she was terminated and barred from rehire after her accrued-points balance allegedly violated the SAG policy.

56. Ms. Webb worked throughout her tenure with AT&T Mobility at its store in Rapid City, South Dakota, located at 1325 Eglin Street, Suite 200.

57. Ms. Webb began as a Sales Representative and then transitioned to Sales Support Representative. In these roles, she was responsible for selling

cellphones, tablets, and cell and data plans; greeting customers; and performing back-office functions.

58. Ms. Webb performed well in these roles, had good relationships with her store managers and coworkers, and received positive performance reviews. In or around the summer of 2016, Ms. Webb approached her then-Store Manager regarding a promotion to Assistant Manager, at either her current or another AT&T Mobility store. He expressed support for this decision and worked with Ms. Webb to position herself for advancement at AT&T Mobility.

59. In or around late fall 2016, Ms. Webb was accepted into AT&T Mobility's "Build the Bench" program, a new three-month training program in Ms. Webb's region that groomed employees for advancement. Ms. Webb learned skills required for advancement into management roles and was told by Area Retail Sales Manager Travis Rich, as well as her store manager and assistant manager, that her involvement in the program would increase her chances for a promotion.

60. In or around January 2017, in or around the time she completed the Build the Bench program, Ms. Webb learned she was pregnant. On or around January 15, 2017, Ms. Webb informed her two Assistant Managers, Chad Sill ("Sill") and Lisa Hohne ("Hohne"), that she was pregnant. Soon thereafter, Ms. Webb also orally informed her Store Manager, John Doyle ("Doyle").

61. During her pregnancy, Ms. Webb suffered from hyperemesis gravidarum (extreme and constant morning sickness that prevented her from eating and staying sufficiently hydrated). The condition was acute, requiring ongoing and emergency medical care and restricting her ability to work. This condition qualifies as a “disability” within the meaning of the ADA.

62. While pregnant, Ms. Webb had to take days off in or around January 2017 to treat this condition. In or around late January 2017, Ms. Webb experienced vomiting so severe that she briefly lost consciousness, prompting her husband to take her to the hospital for emergency care. Because the SAG policy requires employees to report absences or other needed schedule changes to AT&T Mobility at least one hour before their shift start time, while en route to the emergency room Ms. Webb immediately logged into the MyWorkLife app to enter her needed absence for that day. To ensure that her colleagues were aware of the situation, Ms. Webb also sent text messages to Sill, Hohne, and Doyle.

63. Ms. Webb was unable to secure either an excused absence or information about how to seek FMLA leave from AT&T Mobility to cover her absence that day. Upon information and belief, AT&T Mobility requires employees to seek FMLA coverage of an unforeseen leave within three days of the absence in order for it to be “excused.” Within the next three days, Ms. Webb filed the

necessary paperwork with AT&T Mobility's FMLA office to retroactively excuse her absence, including documentation from her doctor about the hospital visit.

64. In or around February 2017, AT&T Mobility denied Ms. Webb FMLA coverage and refused to otherwise excuse her absence for the day she sought emergency care. Ms. Webb asked Doyle for assistance either in obtaining FMLA coverage or securing an excused absence, but he told her he did not have control over excusing her absences and was therefore unable to help her. Instead, pursuant to the SAG policy, AT&T Mobility assigned Ms. Webb a point for this absence.

65. In or around February 2017, Ms. Webb spoke with Rich, her Area Regional Sales Manager, and expressed concern that AT&T Mobility was targeting her because of her pregnancy and related medical conditions. Ms. Webb told Rich about the point assessed to her, under the SAG policy guidelines, as a result of her January 2017 hospitalization related to her pregnancy and hyperemesis gravidarum. Rich assured Ms. Webb that he would look into her concerns, including the point assessed, and follow up with her. Ms. Webb never received any further response or information from Rich.

66. In or around May 2017, Ms. Webb again needed to be absent from work due to hyperemesis gravidarum. She again utilized the MyWorkLife app to provide AT&T Mobility with notice of her absence. Following her absence due to her

pregnancy and pregnancy-related disability, Ms. Webb again sought FMLA coverage and/or an excused absence. Doyle informed Ms. Webb that, under AT&T Mobility's policies, she would have to speak with Integrated Disability Services Center (the "Center"), a third party with which AT&T Mobility contracted to make recommendations regarding disability leave. Upon information and belief, final decisions were made by AT&T Mobility. Ms. Webb provided the Center with documentation from her doctor confirming that her absence was related to her pregnancy and pregnancy-related disability. The Center notified Ms. Webb that she would not be granted disability leave for the absence and AT&T Mobility's FMLA office notified her that she would not receive retroactive FMLA coverage. Upon information and belief, Ms. Webb sought assistance from three employees with AT&T Mobility's FMLA office to appeal the decision, but the employees merely reiterated the denial and confirmed that pursuant to the SAG policy, she would be assigned a point.

67. Despite Ms. Webb having notified the Company that her absences were due to her pregnancy and related medical conditions, including her pregnancy-related disability, AT&T Mobility took no steps to initiate discussions with Ms. Webb about reasonable accommodations for her pregnancy, pregnancy-related conditions, or disability or about her FMLA rights.

68. Before she became pregnant, Ms. Webb had amassed approximately four points under the SAG policy. In or around June 2017, Ms. Webb received a notice from AT&T Mobility that she had amassed enough points for termination under the SAG policy – despite the fact that most of those points resulted from absences related to her pregnancy, pregnancy-related conditions, and pregnancy-related disability. The conditions of employment had grown intolerable for Ms. Webb due to AT&T Mobility’s repeated refusal to excuse her absences related to her pregnancy and pregnancy-related condition. Because Ms. Webb believed that her termination was inevitable, due to the SAG policy terms, Ms. Webb began looking for a position outside the Company.

69. In or around July 2017, Ms. Webb notified Doyle that she had found a new job. During that conversation, Doyle told her that he had received notice from AT&T Mobility that she should be terminated because she had accumulated too many unexcused-absence points under the SAG policy. Those points included those she had accumulated for absences related to her pregnancy, pregnancy-related conditions, and disability, for which Ms. Webb had requested excused absences and/or FMLA leave. When Ms. Webb protested those points, Doyle told her that AT&T Mobility had control over any points she received, and that the decision was out of the control of the store or himself. After informing her that she had exceeded

the points threshold for termination, Doyle told Ms. Webb, “You’re done,” or words to that effect. He told her that her termination was effective immediately, and further, that he had flagged her in AT&T Mobility’s personnel system as ineligible for re-hire, further confirming her termination.

70. AT&T Mobility terminated Ms. Webb due to allegedly excessive absences under the SAG policy, notwithstanding the fact that several of her absences were pregnancy, pregnancy-related conditions, disability, and/or eligible for coverage.

CLASS ACTION ALLEGATIONS

71. Pursuant to Federal Rule of Civil Procedure 23, Ms. Allen and Ms. Webb bring claims for AT&T Mobility’s violation of Title VII (as amended by the PDA).

72. Ms. Allen and Ms. Webb bring these claims on behalf of themselves and all non-exempt, non-managerial female employees in AT&T Mobility’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 Mobility’s SAG policy.

73. Ms. Allen and Ms. Webb assert the following class-wide violations of Title VII:

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

b. AT&T Mobility's actions also constitute disparate treatment and evince discriminatory intent as 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.

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

75. 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, Ms. Webb and the members of the proposed class they seek to represent have all been harmed by AT&T Mobility's SAG policy in that they have received points, discipline, been

denied opportunities for advancement, 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 Mobility's SAG policy and/or its attendance practices treated (and continue to treat) pregnancy, childbirth, or related medical conditions differently from other absences in violation of Title VII (as amended by the PDA);
 - ii. Whether AT&T Mobility'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 Mobility's attendance practices;
 - iv. Whether AT&T Mobility's SAG policy and/or its attendance practices had (and continue to have) a disparate impact on pregnant women; and
 - v. Whether AT&T Mobility's SAG policy and/or its conduct relating to that policy was and is malicious or in reckless indifference to Plaintiffs' and the putative class members' legal rights.
- c. Typicality: Ms. Allen, Ms. Webb 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 Mobility's SAG policy and all have been subject to discipline or experienced negative employment consequences from absences due to pregnancy, childbirth, or related medical conditions. Ms. Allen's and Ms. Webb'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 and Ms. Webb are able to fairly and adequately protect the interests of all members of the class, as they are challenging the same policy and practices as the class as a whole, and there are no known conflicts of interest between Ms. Allen and Ms. Webb and the members of the proposed class. Ms. Allen and Ms. Webb have 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 Mobility 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, Ms. Webb 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 Plaintiffs and the Putative Class

76. Plaintiffs reallege and incorporate by reference, as if fully set forth herein, each and every allegation of this Complaint.

77. Upon information and belief, AT&T Mobility'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).

78. Upon information and belief, AT&T Mobility's SAG policy requirement that excused absences must be reported at least one hour before the start of an employee's shift 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).

79. 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.

80. As a result of AT&T Mobility's unlawful sex discrimination, Plaintiffs and the class they seek to represent have suffered significant monetary loss, including loss of earnings, backpay, and other benefits, 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 Plaintiffs and the Putative Class

81. Plaintiffs reallege and incorporate by reference, as if fully set forth herein, each and every allegation of this Complaint.

82. Upon information and belief, AT&T Mobility intentionally discriminated against Plaintiffs and the putative class members by creating and applying a policy that treats 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).

83. Upon information and belief, AT&T Mobility 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 Mobility's unlawful sex discrimination, Plaintiffs and the class they seek to represent have suffered significant monetary loss, including loss of earnings, backpay, and other benefits, and other non-pecuniary losses.

84. As a result of AT&T Mobility's malice or reckless indifference to the rights of its pregnant employees under the PDA, Plaintiffs and the class they seek to represent also request class-wide 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

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

86. AT&T Mobility discriminated against Ms. Allen, an otherwise qualified individual with a disability as defined by the ADA, by failing to provide her with leave or other reasonable accommodations that were available and that did not pose undue hardship, in violation of the ADA.

87. AT&T Mobility 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.

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

89. AT&T Mobility'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

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

91. Ms. Allen was an "eligible employee" within the meaning of the FMLA.

92. AT&T Mobility 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.

93. As a result of AT&T Mobility’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.

94. AT&T Mobility’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

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

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

97. AT&T Mobility 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.

98. As a result of AT&T Mobility'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.

99. AT&T Mobility'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.

SIXTH 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 Kristine Webb

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

101. AT&T Mobility discriminated against Ms. Webb, an otherwise qualified individual with a disability as defined by the ADA, by failing to provide her with leave or other reasonable accommodations that were available and that did not pose undue hardship, in violation of the ADA.

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

103. As a result of AT&T Mobility’s unlawful disability discrimination, Ms. Webb has suffered significant monetary loss, including loss of earnings and other benefits, and other nonpecuniary losses.

104. AT&T Mobility’s unlawful disability discrimination was undertaken either with malice or with reckless indifference to Ms. Webb’s rights under the law.

SEVENTH CAUSE OF ACTION
FMLA, 29 U.S.C. §§ 2601 *et seq.*
Interference
On Behalf of Plaintiff Kristine Webb

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

106. Ms. Webb was an “eligible employee” within the meaning of the FMLA.

107. AT&T Mobility violated the FMLA by unlawfully interfering with, restraining, or denying the exercise of Ms. Webb’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 or retroactively cover that leave, awarding points—up to and including termination—for using that leave.

108. As a result of AT&T Mobility’s unlawful conduct in violation of the

FMLA, Ms. Webb has suffered harm for which she is entitled to damages in the form of past and future lost income, benefits, and promotional opportunities.

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

EIGHTH CAUSE OF ACTION
FMLA, 29 U.S.C. §§ 2601 *et seq.*
Retaliation
On Behalf of Plaintiff Kristine Webb

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

111. Ms. Webb was an "eligible employee" within the meaning of the FMLA.

112. AT&T Mobility violated the FMLA by unlawfully retaliating against Ms. Webb 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.

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

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

PRAYER FOR RELIEF

For the foregoing reasons, Plaintiffs respectfully requests that the Court grant the following relief:

- A. Declaratory relief, including but not limited to a declaration that AT&T Mobility 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 Mobility'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. Punitive damages;
- E. Liquidated damages,
- F. Pre-judgment and post-judgment interest at the highest lawful rate;
- G. Costs incurred, including reasonable attorneys' fees to the extent allowable by law; and
- H. Such other relief as the Court deems just and proper.

JURY DEMAND

Plaintiffs demand a jury trial on the matters alleged herein.

Dated: June 14, 2019

Respectfully submitted,

/s/ Kalpana Kotagal

Joseph M. Sellers*

Kalpana Kotagal*

Harini Srinivasan*

Cohen Milstein Sellers & Toll PLLC

1100 New York Avenue, Suite 500

Washington, DC 20005

Telephone: (202) 408-4600

Fax: (202) 408-4699

jsellers@cohenmilstein.com

kkotagal@cohenmilstein.com

hsrinivasan@cohenmilstein.com

Gillian L. Thomas*

American Civil Liberties Union

Women's Rights Project

125 Broad Street, 18th Floor

New York, NY 10004

Telephone: (212) 549-2500

gthomas@aclu.org

Sean J. Young (Georgia Bar No. 790399)

American Civil Liberties Union Foundation
of Georgia, Inc.

1100 Spring Street, Suite 640

Atlanta, GA 30309

Telephone: (678) 981-5295

syoung@acluga.org

**pro hac vice*

CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 5.1.C.

I hereby certify, pursuant to LR 5.1 of the Northern District of Georgia, that the foregoing SECOND AMENDED CLASS ACTION COMPLAINT complies with the font and point selections approved by the Court in LR 5.1.C. The foregoing pleading was prepared on a computer using 14-point Times New Roman font.

/s/ Kalpana Kotagal
Kalpana Kotagal (*pro hac vice*)

CERTIFICATE OF SERVICE

I hereby certify that, on June 14, 2019, a copy of the foregoing “Second 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