

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
AT KANSAS CITY

BARRY ROAD ASSOCIATES, INC.,)
d/b/a MINSKY'S PIZZA, and)
)
THE MAIN STREET ASSOCIATES, INC.,)
d/b/a MINSKY'S PIZZA, and)
)
HARRY MARK WOOLDRIDGE,)
Individually and on behalf of all others)
similarly situated,)
)
Plaintiffs,)

v.)

SOUTHWESTERN BELL TELEPHONE)
COMPANY, d/b/a AT&T MISSOURI, and)
)
AT&T INC., and)
)
AT&T CORP.,)
)
Defendants.)

Cause No. 1016-CV02438

Division No. 07

FILED-CIRCUIT COURT
JACKSON COUNTY, MISSOURI
10 APR -5 PM 3:45

**ANSWER AND AFFIRMATIVE DEFENSES OF SOUTHWESTERN BELL
TELEPHONE COMPANY, d/b/a AT&T MISSOURI, TO
FIRST AMENDED CLASS ACTION PETITION FOR DAMAGES**

COMES NOW Defendant Southwestern Bell Telephone Company, d/b/a AT&T
Missouri, ("AT&T Missouri") and for its answer and affirmative defenses to Plaintiffs' First
Amended Class Action Petition for Damages states as follows:

Nature of the Case

1. AT&T Missouri admits that Plaintiffs purport to bring the action described in
Paragraph 1 but denies all remaining allegations in Paragraph 1.



2. AT&T Missouri admits that it was a party to settlement agreements in lawsuits wherein it was sued by Missouri municipalities for failure to pay business license or gross receipt taxes but denies the remaining allegations in Paragraph 2.

3. AT&T Missouri admits that it filed the tariff attached as Exhibit 1 with the Missouri Public Service Commission but denies the remaining allegations in Paragraph 3.

4. AT&T Missouri admits that Plaintiffs seek to represent the putative class set forth in Paragraph 4 but denies the remaining allegations in Paragraph 4.

5. AT&T Missouri admits that Plaintiffs seek damages and disgorgement but denies that Plaintiffs and the putative class are entitled to any relief and denies all remaining allegations in Paragraph 5.

Parties

6. AT&T Missouri is without information or belief sufficient to answer the allegations set forth in Paragraph 6 and therefore denies the same.

7. AT&T Missouri is without information or belief sufficient to answer the allegations set forth in Paragraph 7 and therefore denies the same.

8. AT&T Missouri is without information or belief sufficient to answer the allegations set forth in Paragraph 8 and therefore denies the same.

9. AT&T Missouri is without information or belief sufficient to answer the allegations set forth in Paragraph 9 and therefore denies the same.

10. AT&T Missouri is without information or belief sufficient to answer the allegations set forth in Paragraph 10 and therefore denies the same.

11. AT&T Missouri admits that Plaintiff Harry Mark Wooldridge is its landline telephone customer but denies the remaining allegations in Paragraph 11.

12. AT&T Missouri admits that it is a corporation that conducts business in Missouri as AT&T Missouri with its headquarters and principal place of business in Texas. AT&T Missouri denies the remaining allegations in Paragraph 12.

13. AT&T Missouri admits that it provides local telephone services to Plaintiff Harry Mark Wooldridge as his local exchange carrier and is responsible for the bills he receives. AT&T Missouri further admits that it is a party to the Settlements. AT&T Missouri denies that class treatment is appropriate and is without information or belief sufficient to answer all remaining allegations in Paragraph 13 and therefore denies the same.

14. The allegations contained in Paragraph 14 are not directed to AT&T Missouri, and, therefore, AT&T Missouri need not respond to the allegations in Paragraph 14. To the extent a response is required, AT&T Missouri denies the allegations contained in Paragraph 14.

15. The allegations contained in Paragraph 15 are not directed to AT&T Missouri, and, therefore, AT&T Missouri need not respond to the allegations in Paragraph 15. To the extent a response is required, AT&T Missouri denies the allegations contained in Paragraph 15.

Jurisdiction and Venue

16. AT&T Missouri denies the allegations in Paragraph 16.

17. AT&T Missouri denies the allegations in Paragraph 17.

General Allegations

18. AT&T Missouri is without information or belief sufficient to answer the allegations set forth in Paragraph 18 and therefore denies the same.

19. Paragraph 19 sets forth a short-hand pleading convention used by Plaintiffs in the remainder of the First Amended Class Action Petition for Damages to which no answer is

necessary. To the extent an answer is required, AT&T Missouri denies the allegations in Paragraph 19.

Common Facts

20. AT&T Missouri is without information or belief sufficient to answer the allegations made in the first sentence of Paragraph 20 and therefore denies the same. AT&T Missouri states that the invoices referenced in Paragraph 20 are the best evidence of what language is contained therein but to the extent an answer is required, denies all remaining allegations in Paragraph 20 to the extent they are inconsistent with the referenced invoice.

21. AT&T Missouri is without information or belief sufficient to answer the allegations made in the first sentence of Paragraph 21 and therefore denies the same. AT&T Missouri states that the invoices referenced in Paragraph 21 are the best evidence of what language is contained therein but to the extent an answer is required, denies all remaining allegations in Paragraph 21 to the extent they are inconsistent with the referenced invoice.

22. AT&T Missouri is without information or belief sufficient to answer the allegations made in the first sentence of Paragraph 22 and therefore denies the same. AT&T Missouri states that the invoices referenced in Paragraph 22 are the best evidence of what language is contained therein but to the extent an answer is required, denies all remaining allegations in Paragraph 22 to the extent they are inconsistent with the referenced invoice.

23. AT&T Missouri admits the allegations made in the first sentence of Paragraph 23. AT&T Missouri states that the invoices referenced in Paragraph 23 are the best evidence of what language is contained therein but to the extent an answer is required, denies all remaining allegations in Paragraph 23 to the extent they are inconsistent with the referenced invoice.

24. AT&T Missouri states that the invoices referenced in Paragraph 24 are the best evidence of what language is contained therein but to the extent an answer is required, denies the allegations in Paragraph 24 to the extent they are inconsistent with the referenced invoices.

25. AT&T Missouri denies the allegations in Paragraph 25.

26. AT&T Missouri denies the allegations in Paragraph 26.

27. AT&T Missouri denies that it was not authorized to impose the surcharges at issue here. Its General Exchange Tariff, P.S.C. Mo. – 35 (“General Exchange Tariff”) § 17.11, attached as Exhibit 2, not only authorizes but in fact requires AT&T Missouri to collect these surcharges from certain of its subscribers who reside in municipalities which received a back tax payment by participating in the *Winchester* and *Springfield* settlements. Rather than collect a substantial one-time surcharge from its customers, AT&T Missouri has chosen to collect this surcharge on an incremental basis for some time in the future. AT&T Missouri will not collect more from its customers than the amount of back taxes owed to the participating municipalities as a result of those settlements. AT&T Missouri denies the remaining allegations in Paragraph 27.

Class Action Allegations

28. AT&T Missouri admits that Plaintiffs purport to bring Counts II, III, IV, and V on behalf of the class defined in Paragraph 28. AT&T Missouri denies that class treatment is appropriate and denies the remaining allegations in Paragraph 28.

29. AT&T Missouri admits that Plaintiffs purport to bring Count I on behalf of the class defined in Paragraph 29. AT&T Missouri denies that class treatment is appropriate and denies the remaining allegations in Paragraph 29.

30. AT&T Missouri admits that Plaintiffs purport to bring their action as a class action pursuant to Missouri Rule of Civil Procedure 52.08. AT&T Missouri denies that class treatment is appropriate and denies the remaining allegations in Paragraph 30.

31. AT&T Missouri denies the allegations in Paragraph 31.

32. AT&T Missouri denies the allegations in Paragraph 32, including all subparts.

33. AT&T Missouri denies the allegations in Paragraph 33.

34. AT&T Missouri denies the allegations in Paragraph 34.

35. AT&T Missouri denies the allegations in Paragraph 35, including all subparts.

36. AT&T Missouri denies the allegations in Paragraph 36.

Count I

37. AT&T Missouri restates, realleges, and incorporates herein by reference all of its answers to the allegations in the preceding paragraphs as if set forth fully in this Paragraph and Count.

38. AT&T Missouri denies the allegations in Paragraph 38.

39. AT&T Missouri denies the allegations in Paragraph 39, including all subparts.

40. AT&T Missouri admits that it promoted, marketed, advertised, and disseminated information regarding its local, long distance, and other telecommunications services, to be utilized by Missouri consumers but denies the remaining allegations in Paragraph 40. AT&T Missouri denies these allegations insofar as they are directed to AT&T Inc. and is without information or belief sufficient to answer the allegations insofar as they are directed to AT&T Corp. and therefore denies the same.

41. AT&T Missouri admits that it has published or caused to be published advertising and/or materials regarding its services in the state of Missouri but denies the remaining

allegations in Paragraph 41. AT&T Missouri denies these allegations insofar as they are directed to AT&T Inc. and is without information or belief sufficient to answer the allegations insofar as they are directed to AT&T Corp. and therefore denies the same.

42. Paragraph 42 contains legal conclusions to which no response is required. To the extent a response is required, AT&T Missouri denies all allegations in Paragraph 42.

43. Paragraph 43 contains legal conclusions to which no response is required. To the extent a response is required, AT&T Missouri denies all allegations in Paragraph 43.

44. Paragraph 44 contains legal conclusions to which no response is required. To the extent a response is required, AT&T Missouri denies all allegations in Paragraph 44.

45. Paragraph 45 contains legal conclusions to which no response is required. To the extent a response is required, AT&T Missouri denies all allegations in Paragraph 45.

46. Paragraph 46 contains legal conclusions to which no response is required. To the extent a response is required, AT&T Missouri denies all allegations in Paragraph 46.

47. AT&T Missouri denies the allegations in Paragraph 47.

48. AT&T Missouri denies the allegations in Paragraph 48.

49. AT&T Missouri denies the allegations in Paragraph 49.

50. AT&T Missouri denies the allegations in Paragraph 50.

51. AT&T Missouri denies the allegations in Paragraph 51.

WHEREFORE, Defendant Southwestern Bell Telephone Company, d/b/a AT&T Missouri, denies that Plaintiffs are entitled to any relief whatsoever as a result of the allegations in Count I of Plaintiff's First Amended Class Action Petition, including the Wherefore paragraph, and prays that it be dismissed from this action, that it be permitted to go henceforth

with its costs incurred herein, and that it be awarded such other and further relief as the Court deems just and proper in the circumstances.

Count II

52. AT&T Missouri restates, realleges, and incorporates herein by reference all of its answers to the allegations in the preceding paragraphs as if set forth fully in this Paragraph and Count.

53. AT&T Missouri admits that it offers local exchange and other telephone-related services to customers in the state of Missouri but denies the remaining allegations contained in Paragraph 53. AT&T Missouri denies these allegations insofar as they are directed to AT&T Inc. and is without information or belief sufficient to answer the allegations insofar as they are directed to AT&T Corp. and therefore denies the same.

54. AT&T Missouri admits that Plaintiff Harry Mark Wooldridge subscribes to its telephone service and is a customer of AT&T Missouri but is without information or belief sufficient to answer whether Plaintiffs Barry Road Associates, Inc. and The Main Street Associates, Inc. subscribe to its telephone service or are its customers. AT&T Missouri denies the remaining allegations in Paragraph 54.

55. AT&T Missouri admits that that it accepted money and agreed to serve as Plaintiff Harry Mark Wooldridge's local exchange carrier and telecommunications service provider but is without information or belief sufficient to answer whether it accepted money and agreed to serve as Plaintiffs Barry Road Associates, Inc. and the Main Street Associates, Inc.'s local exchange carrier and telecommunications service provider. AT&T Missouri denies the remaining allegations in Paragraph 55.

56. AT&T Missouri admits that § 17.11 of its General Exchange Tariff obligates it to collect a surcharge from certain of its subscribers who reside in municipalities that participated in the *Winchester* and *Springfield* settlements and that Plaintiffs are not parties to those settlements. AT&T Missouri denies the remaining allegations in Paragraph 56.

57. AT&T Missouri denies the allegations in Paragraph 57.

58. AT&T Missouri denies the allegations in Paragraph 58.

59. AT&T Missouri denies the allegations in Paragraph 59.

60. AT&T Missouri denies the allegations in Paragraph 60.

WHEREFORE, Defendant Southwestern Bell Telephone Company, d/b/a AT&T Missouri, denies that Plaintiffs are entitled to any relief whatsoever as a result of the allegations in Count II of Plaintiff's First Amended Class Action Petition, including the Wherefore paragraph, and prays that it be dismissed from this action, that it be permitted to go henceforth with its costs incurred herein, and that it be awarded such other and further relief as the Court deems just and proper in the circumstances.

Count III

61. AT&T Missouri restates, realleges, and incorporates herein by reference all of its answers to the allegations in the preceding paragraphs as if set forth fully in this Paragraph and Count.

62. AT&T Missouri denies the allegations in Paragraph 62.

63. AT&T Missouri denies the allegations in Paragraph 63.

64. AT&T Missouri denies the allegations in Paragraph 64.

WHEREFORE, Defendant Southwestern Bell Telephone Company, d/b/a AT&T Missouri, denies that Plaintiffs are entitled to any relief whatsoever as a result of the allegations

in Count III of Plaintiff's First Amended Class Action Petition, including the Wherefore paragraph, and prays that it be dismissed from this action, that it be permitted to go henceforth with its costs incurred herein, and that it be awarded such other and further relief as the Court deems just and proper in the circumstances.

Count IV

65. AT&T Missouri restates, realleges, and incorporates herein by reference all of its answers to the allegations in the preceding paragraphs as if set forth fully in this Paragraph and Count.

66. AT&T Missouri admits that its relationships with Plaintiffs are governed by its General Exchange Tariff, which has the force of law in Missouri. AT&T Missouri denies that class treatment is appropriate and denies the remaining allegations in Paragraph 66.

67. AT&T Missouri denies the allegations in Paragraph 67.

68. AT&T Missouri denies the allegations in Paragraph 68.

69. AT&T Missouri denies the allegations in Paragraph 69.

WHEREFORE, Defendant Southwestern Bell Telephone Company, d/b/a AT&T Missouri, denies that Plaintiffs are entitled to any relief whatsoever as a result of the allegations in Count IV of Plaintiff's First Amended Class Action Petition, including the Wherefore paragraph, and prays that it be dismissed from this action, that it be permitted to go henceforth with its costs incurred herein, and that it be awarded such other and further relief as the Court deems just and proper in the circumstances.

Count V

70. AT&T Missouri restates, realleges, and incorporates herein by reference all of its answers to the allegations in the preceding paragraphs as if set forth fully in this Paragraph and Count.

71. AT&T Missouri denies the allegations in Paragraph 71.

72. Paragraph 72 contains legal conclusions to which no response is required. To the extent a response is required, AT&T Missouri denies all allegations in Paragraph 72.

73. AT&T Missouri denies the allegations in Paragraph 73.

74. AT&T Missouri denies the allegations in Paragraph 74.

75. AT&T Missouri denies the allegations in Paragraph 75.

WHEREFORE, Defendant Southwestern Bell Telephone Company, d/b/a AT&T Missouri, denies that Plaintiffs are entitled to any relief whatsoever as a result of the allegations in Count V of Plaintiff's First Amended Class Action Petition, including the Wherefore paragraph, and prays that it be dismissed from this action, that it be permitted to go henceforth with its costs incurred herein, and that it be awarded such other and further relief as the Court deems just and proper in the circumstances.

PRAYER FOR RELIEF

WHEREFORE, Defendant Southwestern Bell Telephone Company, d/b/a AT&T Missouri, denies that Plaintiffs are entitled to any relief whatsoever as a result of the allegations in their First Amended Class Action Petition, including the Prayer For Relief paragraph and its subparts, and prays that it be dismissed from this action, that it be permitted to go henceforth with its costs incurred herein, and that it be awarded such other and further relief as the Court deems just and proper in the circumstances.

AFFIRMATIVE DEFENSES

For its affirmative defenses, AT&T Missouri states:

1. Plaintiffs' First Amended Class Action Petition for Damages fails to state a claim upon which relief can be granted.
2. Plaintiffs lack standing to assert the claims alleged in Plaintiffs' First Amended Class Action Petition for Damages.
3. This Court does not have subject matter jurisdiction over the claims asserted in Plaintiffs' First Amended Class Action Petition for Damages.
4. Plaintiffs lack legal capacity to sue.
5. To the extent Plaintiffs' claims are premised on AT&T Missouri's failure to file tariffs, they fail to state a claim because AT&T Missouri has filed the tariffs at issue. *See* Exhibits 1 and 2.
6. Plaintiffs fail to state a claim and/or lack standing to bring a claim for violation of the Missouri Code of State Regulations because such a claim must be brought before the Missouri Public Service Commission in the first instance, which Plaintiffs have not done.
7. The filed rate doctrine bars each of the causes of action alleged in Plaintiffs' First Amended Class Action Petition for Damages. AT&T Missouri's General Exchange Tariff § 17.11 states that, "[t]here shall be added to the customer's bill or charge, as part of the rate for service, a surcharge equal to the pro rata share of any franchise, occupation, business, license, excise, privilege or other similar tax, fee or charge . . . now or hereinafter imposed . . . by any taxing body or authority, whether by statute, ordinance, law or otherwise and whether presently due or to hereafter become due." *See* Exhibit 2. This tariff mandates that AT&T Missouri collect the surcharge at issue here as part of its rate for service, is the law in Missouri, and

exclusively governs the rights and liabilities of Plaintiffs and AT&T Missouri. The filed rate doctrine further bars Plaintiffs' action because Plaintiffs' challenges, if successful, would have the effect of Plaintiffs paying a rate other than AT&T Missouri's filed tariff rate, which is prohibited.

8. This Court's exercise of jurisdiction is improper because every claim for relief made in the First Amended Class Action Petition for Damages, if not barred by the filed rate doctrine, involves the interpretation and application of AT&T Missouri's General Exchange Tariff and the application of regulations, rules, and orders promulgated and enforced by the Missouri Public Service Commission. The Missouri Public Service Commission has the exclusive authority to resolve such claims for relief pursuant to the primary jurisdiction doctrine.

9. The doctrine of election of remedies bars Plaintiffs' ability to recover under all of the causes of action alleged in the First Amended Class Action Petition for Damages.

10. Plaintiffs' claims are barred, in whole or in part, by the doctrines of ratification, consent, and/or acquiescence. To the extent that Plaintiffs have ratified, consented, or acquiesced to an agreement with AT&T Missouri or any other entity regarding their alleged damages, their claims are barred.

11. Plaintiffs' claims are barred to the extent that third parties, rather than they themselves, incurred the charges and/or damages alleged in the First Amended Class Action Petition for Damages.

12. Plaintiffs have failed to mitigate their damages, if any. To the extent that Plaintiffs have suffered any alleged damages, and have failed to take steps to reduce the scope of those damages, Plaintiffs' recovery is barred.

13. Plaintiffs' claims are barred in whole or in part by the voluntary payment doctrine, including but not limited to the fact that Plaintiffs continued to voluntarily make payments after they instituted this lawsuit.

14. Plaintiffs' claims are barred in whole or in part by the doctrines of accord and satisfaction, settlement, payment, release, and/or discharge, including but not limited to the fact that Plaintiffs continued to voluntarily make payments after they instituted this lawsuit.

15. Plaintiffs, by and through their actions or omissions, have waived the right to recover and/or are estopped from recovering against AT&T Missouri, including but not limited to the fact that Plaintiffs continued to voluntarily make payments after they instituted this lawsuit.

16. Plaintiffs' claims, and especially Count V, are barred because Plaintiffs failed to comply with applicable procedures for challenging AT&T Missouri's rates for service, including but not limited to filing a complaint with the Missouri Public Service Commission.

17. This Court lacks venue as to all Counts except Count V in that Plaintiff Wooldridge's Missouri Merchandising Practices Act claim (Count I) may only be brought where the transaction at issue took place—Cooper County—or where the registered agent for the resident Defendants is located, which is in St. Louis County. Venue for Counts II, III, and IV is governed by § 508.010.2(4) RSMo., which requires that this action be brought in St. Louis County, where the registered agent for the resident Defendants is located. Count V is a pretensive attempt to create venue, and if the Court finds that Count V is improper, this case should be transferred to St. Louis County.

18. Plaintiffs' claims for penalties are barred because AT&T Missouri complied with the mandatory provisions of its General Exchange Tariff, which has the force of law, and therefore did not collect the surcharge at issue here in bad faith.

19. Plaintiffs' claims for attorney's fees are barred because AT&T Missouri complied with the mandatory provisions of its General Exchange Tariff, which has the force of law. It did not willfully violate any order of the Missouri Public Service Commission or any provision of the Public Utility Act.

20. Plaintiffs' claims for punitive damages are barred because this action sounds in contract, not tort. Further, AT&T Missouri complied with the mandatory provisions of its General Exchange Tariff, which has the force of law, and therefore has not acted with the requisite degree of culpability required for the imposition of punitive damages.

21. Plaintiffs' claims for punitive damages are barred by the "double jeopardy" clause of the Fifth Amendment to the United States Constitution, as applied to the states through the Fourteenth Amendment.

22. AT&T Missouri alleges and avers that Plaintiffs' claim for punitive damages is not cognizable by this Court in that the laws establishing the standards for granting and assessing punitive damages are vague, ambiguous and arbitrary, resulting in extremely disparate results among similar defendants accused of similar conduct, thereby violating AT&T Missouri's Constitutional rights to due process and equal protection under the Fourteenth Amendment to the United States Constitution and the Constitution of the State of Missouri, Article I, §10, and that any law of the State of Missouri, whether enacted by the Missouri legislature or founded upon decisions of the Missouri courts, permitting Plaintiffs to recover punitive damages is unconstitutional.

23. Plaintiffs' claim for punitive damages is unconstitutional to the extent that an award, if made, would punish AT&T Missouri without protection of constitutional safeguards, including but not limited to, proof beyond a reasonable doubt, the right to a speedy trial, the prohibitions against double jeopardy and excessive fines, and freedom from self-incrimination during the discovery process and trial which is guaranteed under the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution and the Constitution of the State of Missouri, Article I, §18(a) and §19, and that any law of the state of Missouri, whether enacted by the Missouri legislature or founded upon decisions of Missouri courts, permitting Plaintiffs to recover punitive damages without protection of such safeguards is unconstitutional.

24. Unless AT&T Missouri's liability for punitive damages and the appropriate amount of punitive damages are required to be established by clear and convincing evidence, any award of punitive damages would violate its due process rights guaranteed by the Fourteenth Amendment to the United States Constitution and by the Constitution of the State of Missouri, Article I, §10, and would be improper under the common law and public policies of the state of Missouri.

25. Plaintiffs' claim for punitive damages against AT&T Missouri cannot be sustained because an award of punitive damages under Missouri law is subject to no predetermined limit, such as a maximum multiple of compensatory damages or a maximum amount, and under such circumstances an award of any amount of punitive damages would violate its due process rights guaranteed by the Fourteenth Amendment to the United States Constitution and the Constitution of the State of Missouri, Article I, §10, and would be improper under the common law and public policies of the state of Missouri.

26. Plaintiffs' claim for punitive damages against AT&T Missouri cannot be sustained because an award of punitive damages under Missouri law by a jury that (1) is not provided standards of sufficient clarity for determining the appropriateness, and the appropriate size, of a punitive damage award, (2) is not adequately instructed on the limits of punitive damages imposed by the applicable principles of deterrence and punishment, (3) is not expressly prohibited from awarding punitive damages or determining the amount of an award of punitive damages, in whole or in part, on the basis of invidiously discriminatory characteristics, including the residence, wealth, and corporate status of AT&T Missouri, (4) is permitted to award punitive damages under a standard for determining liability for punitive damages that is vague and arbitrary and does not define with sufficient clarity the conduct or mental state that makes punitive damages permissible, (5) is not adequately instructed on a required relationship between the actual damages sustained and the amount of punitive damages which may be awarded, and (6) is not subject to a trial court and appellate judicial review for reasonableness and furtherance of legitimate purposes on the basis of objective standards, would violate AT&T Missouri's due process and equal protection rights guaranteed by the Fourteenth Amendment to the United States Constitution and by the Constitution of the State of Missouri, Article I, §10, and Article I, §2, and would be improper under the common law and public policies of the state of Missouri.

27. Plaintiffs' claim for punitive damages against AT&T Missouri cannot be sustained because any law which awards a portion of any damage award to the state, such as provided in §537.675 RSMo., is unconstitutional as it would amount to a taking of its property without due process of law and would violate its due process and equal protection rights guaranteed by the Fourteenth Amendment to the United States Constitution and by the Constitution of the State of Missouri, Article I, §10, and Article I, §2.

28. An award of punitive damages is barred by the Eighth Amendment to the United States Constitution and Article I, §21 of the Missouri Constitution because an award of punitive damages would constitute an excessive fine in that under Missouri law, a portion of punitive damage awards are paid to the state of Missouri, thus constituting a penal fine that is excessive and disproportionate to the conduct at issue in this case.

29. Recovery of punitive damages by Plaintiffs in this case is barred by the Due Process clauses of the Fifth and Fourteenth Amendments to the United States Constitution and Article I, §10 of the Missouri Constitution because the standards and procedures for determining and reviewing such awards under applicable law do not sufficiently ensure a meaningful individualized assessment of appropriate deterrence and retribution.

30. AT&T Missouri reserves the right to assert any additional affirmative defenses that may develop through further discovery in this case.

Respectfully submitted,

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AT&T Corp.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been mailed, first class
mail postage prepaid, this 5th day of April, 2010 to:

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