

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
FORT LAUDERDALE DIVISION

DOUGLAS VERGARA, Individually,  
ALVARO CAJATE, Individually,  
CHARLES CAMILUS, Individually,  
LUCIANO DANTAS RIBEIRO, Individually,  
ALEX DE MELO, Individually,  
VASCOE DUHANEY, Individually,  
FABIO GONCALVES, Individually,  
ELDER LABRANCHE, Individually,  
SAMUEL OLIVEIRA DE LIMA, Individually,  
SHANNON RAY, Individually,  
ALMERINDO REIS FILHO, Individually,  
ALLAN REIS, Individually,  
MARCIO ROBERTO CASALINI, Individually,  
ALEXANDRE SERVIUS, Individually,  
CARLOS SUOZA, Individually,  
GUSTAVO TORRES GOULART, Individually, and  
DANIEL VALENTIM, Individually, each on their own  
behalf and all similarly situated individuals,

Plaintiffs,

v.

CASE NO.: 09-60131-CIV-UNGARO/SIMONTON

AM BROADBAND, LLC., a Florida Limited  
Liability Corporation d/b/a NEXLINK  
COMMUNICATIONS.,

Defendants.

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**AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL**

Plaintiffs, DOUGLAS VERGARA, ALVARO CAJATE, CHARLES CAMILUS,  
LUCIANO DANTAS RIBEIRO, ALEX DE MELO, VASCOE DUHANEY, FABIO  
GONCALVES, ELDER LABRANCHE, SAMUEL OLIVEIRA DE LIMA, SHANNON RAY,  
ALMERINDO REIS FILHO, ALLAN REIS, MARCIO ROBERTO CASALINI, ALEXANDRE

SERVIUS, CARLOS SUOZA, GUSTAVO TORRES GOULART, and DANIEL VALENTIM, Individually, (collectively “Plaintiffs”), on behalf of himself and other employees and former employees similarly situated, by and through undersigned counsel, files this Complaint against Defendant, AM BROADBAND, LLC, a Florida Limited Liability Corporation d/b/a NEXLINK COMMUNICATIONS (“NEXLINK” or “Defendant”), and states as follows:

**JURISDICTION**

1. Jurisdiction in this Court is proper as the claims are brought pursuant to the Fair Labor Standards Act, as amended (29 U.S.C. §201, et seq., hereinafter called the “FLSA”) to recover unpaid back wages, an additional equal amount as liquidated damages, obtain declaratory relief, and reasonable attorney’s fees and costs.

2. The jurisdiction of the Court over this controversy is based upon 29 U.S.C. §216(b).

**PARTIES**

3. At all times material hereto, Plaintiff, DOUGLAS VERGARA was, and continues to be a resident of Broward County, Florida.

4. At all times material hereto, Plaintiff, ALARO CAJATE was, and continues to be a resident of Broward County, Florida.

5. At all times material hereto, Plaintiff, CHARLES CAMILUS was, and continues to be a resident of Broward County, Florida.

6. At all times material hereto, Plaintiff, LUCIANO DANTAS RIBEIRO was, and continues to be a resident of Broward County, Florida.

7. At all times material hereto, Plaintiff, ALEX DE MELO was, and continues to be a resident of Broward County, Florida.

8. At all times material hereto, Plaintiff, VASCOE DUHANEY was, and continues to

be a resident of Broward County, Florida.

9. At all times material hereto, Plaintiff, FABIO GONCALVES was, and continues to be a resident of Broward County, Florida.

10. At all times material hereto, Plaintiff, ELDER LABRANCHE was, and continues to be a resident of Broward County, Florida.

11. At all times material hereto, Plaintiff, SAMUEL OLIVEIRA DE LIMA was, and continues to be a resident of Broward County, Florida.

12. At all times material hereto, Plaintiff, SHANNON RAY was, and continues to be a resident of Pasco County, Florida.

13. At all times material hereto, Plaintiff, ALMERINDO REIS FILHO was, and continues to be a resident of Broward County, Florida.

14. At all times material hereto, Plaintiff, ALLAN REIS was, and continues to be a resident of Broward County, Florida.

15. At all times material hereto, Plaintiff, MARCIO ROBERTO CASALINI was, and continues to be a resident of Broward County, Florida.

16. At all times material hereto, Plaintiff, ALEXANDRE SERVIUS was, and continues to be a resident of Broward County, Florida.

17. At all times material hereto, Plaintiff, CARLOS SUOZA was, and continues to be a resident of Broward County, Florida.

18. At all times material hereto, Plaintiff, GUSTAVO TORRES GOULART was, and continues to be a resident of Miami-Dade County, Florida.

19. At all times material hereto, Plaintiff, DANIEL VALENTIM was, and continues to be a resident of Broward County, Florida.

20. At all times material hereto NEXLINK was, and continues to be a Florida corporation. Further, at all times material hereto, NEXLINK was, and continues to be, engaged in business in Florida, with a principle place of business in Broward County, Florida.

21. At all times material hereto, Plaintiffs were “engaged in commerce” within the meaning of §6 and §7 of the FLSA.

22. At all times material hereto, Plaintiffs were “employees” of Defendants within the meaning of FLSA.

23. At all times material hereto, Defendant was the “employer” within the meaning of FLSA.

24. Defendant was, and continues to be, “employer” within the meaning of FLSA.

25. At all times material hereto, Defendant was, and continues to be an, “enterprise engaged in commerce” within the meaning of FLSA.

26. At all times material hereto, Defendant was, and continue to be an, enterprise engaged in the “production of goods for commerce” within the meaning of the FLSA.

27. Based upon information and belief, the annual gross revenue of Defendant was in excess of \$500,000.00 per annum during the relevant time periods.

28. At all times material hereto, Defendant had two (2) or more employees handling, selling, or otherwise working on goods or materials that had been moved in or produced for commerce.

29. At all times hereto, Plaintiffs were “engaged in commerce” and subject to individual coverage of the FLSA.

30. At all times hereto, Plaintiffs were engaged in the “production of goods for commerce” and subject to the individual coverage of the FLSA.

31. The additional persons who may become plaintiffs in this action are/were “technician” employees for Defendant, who held similar positions to Plaintiffs and who worked in excess of forty (40) hours during one or more work weeks during the relevant time periods but who did not receive pay at one and one-half times their regular rate for their hours worked in excess of forty (40) hours.

32. At all times material hereto, the work performed by the Plaintiffs were directly essential to the business performed by Defendant.

### **STATEMENT OF FACTS**

33. Plaintiffs were hired by Defendant to work as “technicians” between 2006 and 2009.

34. At various material times hereto, Plaintiffs worked for Defendant in excess of forty (40) hours within a work week.

35. From at least September 2006 and continuing through May 2009, Defendant failed to compensate Plaintiffs at rate of one and one-half times Plaintiffs’ regular rate for all hours worked in excess of forty (40) hours in a single work week. Plaintiffs should be compensated at the rate of one and one-half times Plaintiff’s regular rate for those hours that Plaintiffs worked in excess of forty (40) hours per week as required by the FLSA.

36. Prior the filing of this lawsuit, Plaintiffs, through their undersigned attorney, requested all relevant pay and time records from Defendant, by correspondence dated January 20, 2009. A copy of the letters requesting same is attached as Exhibit “A”. Notwithstanding this effort, however, Defendant had failed and/or refused to timely and fully provide all such records.

37. Defendant have violated Title 29 U.S.C. §207 from at least June 2007 and continuing to date, in that:

- a. Plaintiffs worked in excess of forty (40) hours per week for the period of employment with Defendant;
- b. No payments, and provisions for payment, have been made by Defendant to properly compensate Plaintiffs at the statutory rate of one and one-half times Plaintiffs' regular rate for those hours worked in excess of forty (40) hours per work week as provided by the FLSA; and
- c. Defendant has failed to maintain proper time records as mandated by the FLSA.

38. Plaintiffs have retained the law firm of MORGAN & MORGAN, P.A. to represent Plaintiff in the litigation and has agreed to pay the firm a reasonable fee for its services.

**COUNT I**  
**VIOLATION OF 29 U.S.C. §207**  
**OVERTIME COMPENSATION**

39. Plaintiffs reallege and reaver paragraphs 1 through 38 of the Amended Complaint as if fully set forth herein.

40. From at least September 2006 and continuing through may 2008, Plaintiffs worked in excess of the forty (40) hours per week for which Plaintiffs were not compensated at the statutory rate of one and one-half times Plaintiff's regular rate of pay.

41. Plaintiffs were, and are entitled to be paid at the statutory rate of one and one-half times Plaintiffs' regular rate of pay for those hours worked in excess of forty (40) hours.

42. At all times material hereto, Defendant failed, and continues to fail, to maintain proper time records as mandated by the FLSA.

43. Defendant's actions were willful and/or showed reckless disregard for the provisions of the FLSA as evidenced by its failure to compensate Plaintiffs at the statutory rate of

one and one-half times Plaintiffs' regular rate of pay for the hours worked in excess of forty (40) hours per weeks when it knew, or should have known, such was, and is due.

44. Defendant has failed to properly disclose or apprise Plaintiffs of Plaintiffs' rights under the FLSA.

45. Due to the intentional, willful, and unlawful acts of Defendant, Plaintiffs suffered and continue to suffer damages and lost compensation for time worked over forty (40) hours per week, plus liquidated damages.

46. Plaintiffs are entitled to an award of reasonable attorney's fees and costs pursuant to 29 U.S.C. §216(b).

47. At all times material hereto, Defendant failed to comply with Title 29 and United States Department of Labor Regulations, 29 C.F.R. §§516.2 and 516.4, with respect to those similarly situated to the named Plaintiffs by virtue of the management policy, plan or decision that intentionally provided for the compensation of such employees for fewer hours than they actually worked.

48. Based upon information and belief, the employees and former employees of Defendant similarly situated to Plaintiffs were not paid proper overtime for hours worked in excess of forty (40) in one or more workweeks, because Defendant has failed to properly pay Plaintiffs, and those similarly situated to them, proper over wages at time and a half their regular rate of pay for such hours.

WHEREFORE, Plaintiffs respectfully request that judgment be entered in their favor against Defendant:

- a. Declaring, pursuant to 29 U.S.C. §§2201 and 2202, that the acts and practices complained of herein are in violation of the maximum hour

provisions of the FLSA;

- b. Awarding Plaintiffs overtime compensation in the amount due to them for Plaintiffs' time worked in excess of forty (40) hours per work week;
- c. Awarding Plaintiffs liquidated damages in an amount equal to the overtime award;
- d. Awarding Plaintiffs reasonable attorney's fees and costs and expenses of the litigation pursuant to 29 U.S.C. §216(b);
- e. Awarding Plaintiffs pre-judgment interest;
- f. Ordering any other further relief the Court deems just and proper.

**JURY DEMAND**

Plaintiff demands trial by jury on all issues so triable as a matter of right by jury.

DATED this 28<sup>th</sup> day of December 2009.

Respectfully submitted,

**s/ ANDREW FRISCH**

Andrew Frisch, Esq.

FL Bar No.: 27777

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**Trial Counsel for Plaintiffs**