

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Jon Takasugi

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

NORAIR MILITOSYAN; SHAUNT) CASE NO.: **20STCV42893**
SIMONIAN;)

Plaintiffs,)

vs.)

HIT MOBILE, INC. and DOES 1 to 25,
inclusive,)

Defendants.)

COMPLAINT FOR DAMAGES FOR:

- 1) DISCRIMINATION ON THE BASIS
OF RACE, NATIONAL ORIGIN,
AND/OR ANCESTRY IN
VIOLATION OF FAIR
EMPLOYMENT AND HOUSING
ACT ("FEHA")**
- 2) FAILURE TO PREVENT
DISCRIMINATION IN VIOLATION
OF FEHA**
- 3) WRONGFUL TERMINATION IN
VIOLATION OF PUBLIC POLICY**
- 4) INTENTIONAL INFLICTION OF
EMOTIONAL DISTRESS**
- 5) NEGLIGENT INFLICTION OF
EMOTIONAL DISTRESS**
- 6) FAILURE TO COMPENSATE FOR
ALL HOURS WORKED;**
- 7) FAILURE TO PAY MINIMUM
WAGES;**
- 8) FAILURE TO PAY OVERTIME;**
- 9) FAILURE TO PROVIDE
ACCURATE ITEMIZED WAGE
STATEMENTS;**
- 10) FAILURE TO PAY WAGES WHEN
EMPLOYMENT ENDS;**
- 11) FAILURE TO PAY WAGES OWED
EVERY PAY PERIOD;**
- 12) VIOLATION OF LABOR CODE
SECTION 558;**

1)
2) **13) FAILURE TO MAINTAIN**
3) **ACCURATE RECORDS;**
4) **14) FAILURE TO PROVIDE REST**
5) **BREAKS;**
6) **15) FAILURE TO PROVIDE MEAL**
7) **BREAKS;**
8) **16) PRIVATE ATTORNEYS GENERAL**
9) **ACT (“PAGA”)**
10) **17) FAILURE TO REIMBURSE**
11) **BUSINESS EXPENSES;**
12) **18) VIOLATION OF BUSINESS AND**
13) **PROFESSIONS CODE SECTION**
14) **17200**

15) **JURY TRIAL DEMANDED**
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COMES NOW Plaintiffs NORAIR MILITOSYAN (“Plaintiff Militosyan”) and
SHAUNT SIMONIAN (“Plaintiff Simonian”) (hereinafter collectively “Plaintiffs”), and allege
as follows:

PARTIES, JURISDICTION, and VENUE

1. Jurisdiction and Venue are proper in this Court and this action is properly filed in the
County of Los Angeles in this judicial district because Defendants HIT MOBILE, INC. and
DOES 1 to 25, inclusive, do business in the County of Los Angeles, and because Defendants’
obligations and liabilities arise therein, and because the work that was performed by Plaintiffs
in the County of Los Angeles is the subject of this action. Moreover, Plaintiffs’ damages
sought herein exceed \$25,000.

2. Plaintiff Militosyan is a male resident of the County of Los Angeles, State of
California.

3. Plaintiff Simonian is a male resident of the County of Los Angeles, State of California.

1 4. Plaintiffs are informed and believe that at all times herein mentioned, Defendant
2 HIT MOBILE, INC. (hereinafter "HIT MOBILE") is a California corporation, doing business
3 in the County of Los Angeles, State of California. Defendant is an entity subject to suit under
4 the California Fair Employment and Housing Act, Government Code section 12940, et. seq.
5 ("FEHA").

6 5. Plaintiffs are ignorant of the true names and capacities, whether individual, corporate,
7 or associate of those defendants fictitiously sued as DOES 1 to 25, inclusive, and so Plaintiffs
8 sue them by these fictitious names. Plaintiffs are informed and believes that each of the DOE
9 defendants, numbers 1 to 25, reside in the State of California and are in some manner
10 responsible for the conduct alleged herein. Upon discovering the true names and capacities of
11 these fictitiously named defendants, Plaintiffs will amend this complaint to show the true
12 names and capacities of these fictitiously named defendants.

13 6. Unless otherwise alleged in this complaint, Plaintiffs are informed, and on the basis of
14 that information and belief, allege that at all times herein mentioned, each of the remaining
15 codefendants, in doing the things hereinafter alleged, were acting within the course, scope, and
16 under the authority of their agency, employment, or representative capacity, with the consent
17 of his/her codefendants.

18 **GENERAL ALLEGATIONS**

19 7. Plaintiff Norair Militosyan initially started working for HIT MOBILE on or around
20 December 2018. Plaintiff Militosyan 's latest role was that of a managerial position at the Van
21 Nuys store and he was classified as an hourly, non-exempt employee and earned \$21.00/hour
22 plus commissions based on monthly store revenue as well as target sales for particular items.
23 Plaintiff Militosyan 's employment at HIT MOBILE ended towards the end of November
24 2019.

25 8. HIT MOBILE has committed numerous labor code violations against Plaintiff
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Militosyan.

9. HIT MOBILE violated Labor Code §§ 512 and 226.7 and the applicable Industrial Welfare Commission Wage Order nos. 4 or 7 because it failed to provide Plaintiff Militosyan and other similarly situated aggrieved employees the requisite 30-minute, uninterrupted meal periods for every five (5) hours of work throughout their employment, and Plaintiff Militosyan did not validly waive said meal periods. HIT MOBILE did not completely relieve Plaintiff Militosyan of all duties during said meal periods. HIT MOBILE did not pay to Plaintiff Militosyan one additional hour of pay at Plaintiff Militosyan's regular rate of compensation for each workday that one or more statutory meal periods was not provided. Receiving a timely, thirty-minute uninterrupted meal break prior to the 5th hour worked was not part of the company culture and was not enforced by HIT MOBILE. Moreover, it was not part of company policy to allow a second meal period when the work shifts were 10 hours or longer. On most occasions, Plaintiff Militosyan and other aggrieved employees would clock out for lunch but continue working through lunch due to being short-staffed and being too busy with work obligations. Furthermore, it was company policy for there to be a certain number of individuals on the sales floor at all times. The company culture dictated that Plaintiff Militosyan and others "clock out" for their meal period and continue working. Employees such as Plaintiff Militosyan and others would quickly eat in the back for a few minutes in passing as they were working. As such, it was the normal practice and custom of HIT MOBILE not to authorize, permit, and enforce timely, statutory meal periods.

10. Similarly, HIT MOBILE violated Labor Code § 226.7 and the applicable Industrial Welfare Commission Wage Order nos. 4 or 7 because it failed to provide Plaintiff Militosyan and other similarly situated aggrieved employees 10-minute rest periods for every four hours of work, or majority portion thereof, throughout their employment. HIT MOBILE did not completely relieve Plaintiff Militosyan of all duty during said rest periods. HIT MOBILE did not pay to Plaintiff Militosyan one additional hour of pay at Plaintiff Militosyan's regular rate of compensation for each workday that one or more statutory rest periods was not provided.

1 Like the situation with meal periods described above, Plaintiff Militosyan and other aggrieved
2 employees were simply too busy and too short-staffed to be able to take uninterrupted ten-
3 minute rest breaks multiple times during a workday. Rest breaks were not discussed and were
4 not authorized or enforced as part of the overall company culture, despite what it may state in
5 any Employee handbook. As such, it was the normal practice and custom of HIT MOBILE not
6 to authorize, permit, and enforce statutory rest periods.

7 11. Further, HIT MOBILE did not provide Plaintiff Militosyan and other aggrieved
8 employees with the minimum wages to which they were entitled for work performed “off the
9 clock”, pursuant to California Labor Code sections 1194, 1197 and 1197.1. This was so because
10 Plaintiff Militosyan and others would be required by upper management at the District level to
11 clock out and continue working. Due to being short-staffed, Plaintiff Militosyan and others
12 would be asked to work more hours but would be instructed to clock out and to continue working
13 hours “off the clock”. The latter was also a function of upper level management, including the
14 District Manager, telling Plaintiff Militosyan and other employees that if they worked overtime,
15 they would be written up with a final written notice. As such, it was part of the company culture
16 for employees such as Plaintiff Militosyan to work overtime, but to work those hours “off the
17 clock” to avoid getting in trouble. In addition, the “off the clock” hours also include working
18 through their meal breaks as described above.

19 12. Furthermore, Plaintiff Militosyan and others, especially in the management positions,
20 were not properly compensated for their commission payments due to issues with a program
21 called the “Viva Tracker” and how it would calculate total revenues. “Viva Tracker” was
22 supposed to track sales; however, the application would not work properly, and total revenues
23 would not be accurately reflected. The latter was an issue that Plaintiff Militosyan and others
24 consistently complained about, however, it was never resolved.

25 13. HIT MOBILE also violated Labor Code §510 because it failed to pay Plaintiff Militosyan
26 and other similarly situated aggrieved employees overtime, even though they worked more than
27 8 hours per day, 12 hours per day, and/or 40 hours per week throughout their employment.
28 Plaintiff Militosyan and other similarly situated aggrieved employees worked more than 8 hours

per day, 12 hours per day and/or 40 hours per week, however, they were not compensated for their overtime hours due to being forced to clock out and continue working “off the clock” as described above. Moreover, Plaintiff Militosyan and others were not properly compensated at the correct overtime rate of pay in that HIT MOBILE did not properly consider commissions and bonuses in calculating the correct regular rate of pay for purposes of deciphering the correct overtime rate of pay. In addition, there was a period wherein Plaintiff Militosyan worked somewhere around 16 days in a row, however, he was not paid the proper overtime (at least 1.5 times his regular rate) in terms of working the seventh consecutive day.

14. Furthermore, during the relevant time period, HIT MOBILE failed to pay Plaintiff Militosyan and other similarly situated aggrieved employees all wages due to them within any time period specified by California Labor Code section 204. HIT MOBILE was also in violation of California Labor Code section 226(a) by failing to include pertinent information on the wage statements, including but not limited to, all hours worked, all hourly rates, overtime hours worked, gross wages earned, premium pay for missed meal and rest breaks, correct commission payments, all deductions, net wages earned, and reimbursement for business expenses, among others. As such, HIT MOBILE did not provide Plaintiff Militosyan and other similarly situated aggrieved employees with complete, accurate itemized wage statements.

15. HIT MOBILE violated Labor Code § 203 because it willfully failed to pay Militosyan and other similarly situated aggrieved employees their earned and due wages upon separation of employment, either immediately upon involuntary termination, or within 72 hours of resignation. These earned but unpaid wages include the unpaid minimum wages, overtime, premium pay for missed meal and rest breaks, and business expense reimbursement, among others.

16. During the relevant time period, HIT MOBILE also failed to keep accurate and complete payroll records showing the hours worked by Plaintiff Militosyan and other similarly situated aggrieved employees as well as the correct wages paid to Plaintiff Militosyan and other aggrieved employees pursuant to California Labor Code sections 1174(d).

17. During the relevant time period, Plaintiff Militosyan and other aggrieved employees

1 incurred necessary, business-related expenses and costs that were not reimbursed by HIT
2 MOBILE. These costs include, but are not limited to, the use their personal cell phones for work
3 purposes. As an example, Plaintiff Militosyan and others would have to download an application
4 called “Slack” on their personal cell phones and use the application for work purposes, including
5 inputting numbers into the application. Accordingly, HIT MOBILE was in violation of
6 California Labor Code sections 2800 and 2802.

7 18. Plaintiff Militosyan, who is of Armenian descent, started working for Hit Mobile in
8 December 2018. On or around November 25, 2019, Plaintiff Militosyan was terminated from
9 his employment for allegedly helping an Armenian customer commit fraud against Hit Mobile.
10 The company's basis for the termination was that Plaintiff Militosyan had helped the Armenian
11 customer in processing transactions and that this somehow made Plaintiff Militosyan complicit
12 in the fraud. It is important to note that several other employees, who were not of Armenian
13 descent, also helped this Armenian customer in processing allegedly fraudulent transactions,
14 but those employees were not reprimanded or terminated. Due to the fact that Plaintiff
15 Militosyan is Armenian, Hit Mobile assumed that Plaintiff Militosyan would be engaging in
16 the fraud and benefitting from the fraud in aiding the Armenian customer. Hit Mobile used
17 stereotypes and generalizations to attribute fault to Plaintiff Militosyan and to subsequently
18 terminate him from his employment, simply due to the fact that Plaintiff Militosyan is
19 Armenian.

20 19. Plaintiff Shaunt Simonian initially started working for HIT MOBILE on or around late
21 2018 as a Sales Representative. Plaintiff Simonian was classified as an hourly, non-exempt
22 employee and earned \$13.25/hour plus commissions. Plaintiff Simonian’s employment at HIT
23 MOBILE ended on or around late November 2019.

24 20. HIT MOBILE violated Labor Code §§ 512 and 226.7 and the applicable Industrial
25 Welfare Commission Wage Order nos. 4 or 7 because it failed to provide Plaintiff Simonian
26 and other similarly situated aggrieved employees the requisite 30-minute, uninterrupted meal
27 periods for every five (5) hours of work throughout their employment, and Plaintiff Simonian
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1 did not validly waive said meal periods. HIT MOBILE did not completely relieve Plaintiff
2 Simonians of all duties during said meal periods. HIT MOBILE did not pay to Plaintiff
3 Simonian one additional hour of pay at Plaintiff Simonian's regular rate of compensation for
4 each workday that one or more statutory meal periods was not provided. Receiving a timely,
5 thirty-minute uninterrupted meal break prior to the 5th hour worked was not part of the
6 company culture and was not enforced by HIT MOBILE. Moreover, it was not part of
7 company policy to allow a second meal period when the work shifts were 10 hours or longer.
8 There are also occasions wherein Plaintiff Simonian and other aggrieved employees would
9 clock out for lunch but continue working through lunch due to being short-staffed and being
10 too busy with work obligations. The company culture dictated that Plaintiff Simonian and
11 others "clock out" for their meal period and continue working since management did not want
12 to have meal period violations on paper. As such, it was the normal practice and custom of HIT
13 MOBILE not to authorize, permit, and enforce timely, statutory meal periods.

14 21. Similarly, HIT MOBILE violated Labor Code § 226.7 and the applicable Industrial
15 Welfare Commission Wage Order nos. 4 or 7 because it failed to provide Plaintiff Simonian
16 and other similarly situated aggrieved employees 10-minute rest periods for every four hours of
17 work, or majority portion thereof, throughout their employment. HIT MOBILE did not
18 completely relieve Plaintiff Simonian of all duty during said rest periods. HIT MOBILE did
19 not pay to Plaintiff Simonian one additional hour of pay at Plaintiff Simonian's regular rate of
20 compensation for each workday that one or more statutory rest periods was not provided. Like
21 the situation with meal periods described above, Plaintiff Simonian and other aggrieved
22 employees were simply too busy and too short-staffed to be able to take uninterrupted ten-
23 minute rest breaks multiple times during a workday. Rest breaks were not discussed and were
24 not authorized or enforced as part of the overall company culture, despite what it may state in
25 any Employee handbook. As such, it was the normal practice and custom of HIT MOBILE not
26 to authorize, permit, and enforce statutory rest periods.

27 22. Further, HIT MOBILE did not provide Plaintiff Simonian and other aggrieved employees
28 with the minimum wages to which they were entitled for work performed "off the clock",

1 pursuant to California Labor Code sections 1194, 1197 and 1197.1. This was so because Plaintiff
2 Simonian and others would be required by management to clock out and then stay for several
3 hours (3 hours or so) and continue working. This happened to Plaintiff Simonian several times
4 a week and was a regular occurrence. Due to being short-staffed, Plaintiff Simonian would be
5 asked to work more hours, but would be instructed to clock out at the end of his regular shift and
6 to continue working hours “off the clock”. The latter was also a function of management,
7 including the District Manager, telling Plaintiff Simonian and other employees that if they
8 worked overtime, they would be written up with a final written notice. As such, it was part of
9 the company culture for employees such as Plaintiff Simonian to work overtime, but to work
10 those hours “off the clock” to avoid getting in trouble. There was also an issue regarding “off
11 the clock” work due to employees such as Plaintiff Simonian and others working through meal
12 periods even though they were technically clocked out.

13 23. Furthermore, Plaintiff Simonian and other sales representatives were not properly and
14 accurately compensated for their commission payments per company policy.

15 24. HIT MOBILE also violated Labor Code §510 because it failed to pay Plaintiff Simonian
16 and other similarly situated aggrieved employees overtime, even though they worked more than
17 8 hours per day, 12 hours per day, and/or 40 hours per week throughout their employment.
18 Plaintiff Simonian and other similarly situated aggrieved employees worked more than 8 hours
19 per day, 12 hours per day and/or 40 hours per week, however, they were not compensated for
20 their overtime hours due to being forced to clock out and continue working “off the clock” as
21 described above. Moreover, Plaintiff Simonian and others were not properly compensated at the
22 correct overtime rate of pay in that HIT MOBILE did not properly consider commissions and
23 bonuses in calculating the correct regular rate of pay for purposes of deciphering the correct
24 overtime rate of pay.

25 25. Furthermore, during the relevant time period, HIT MOBILE failed to pay Plaintiff
26 Simonian and other similarly situated aggrieved employees all wages due to them within any
27 time period specified by California Labor Code section 204. HIT MOBILE was also in violation
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1 of California Labor Code section 226(a) by failing to include pertinent information on the wage
2 statements, including but not limited to, all hours worked, overtime hours worked, gross wages
3 earned, premium pay for missed meal and rest breaks, commission payments, all deductions, net
4 wages earned, and reimbursement for business expenses, among others. As such, HIT MOBILE
5 did not provide Plaintiff Simonian and other similarly situated aggrieved employees with
6 complete, accurate itemized wage statements.

7 26. HIT MOBILE violated Labor Code § 203 because it willfully failed to pay Plaintiff
8 Simonian and other similarly situated aggrieved employees their earned and due wages upon
9 separation of employment, either immediately upon involuntary termination, or within 72 hours
10 of resignation. These earned but unpaid wages include the unpaid minimum wages, overtime,
11 premium pay for missed meal and rest breaks, and business expense reimbursement, among
12 others.

13 27. During the relevant time period, HIT MOBILE also failed to keep accurate and complete
14 payroll records showing the hours worked by Plaintiff Simonian and other similarly situated
15 aggrieved employees as well as the correct wages paid to Plaintiff Simonian and other aggrieved
16 employees pursuant to California Labor Code sections 1174(d).

17 28. During the relevant time period, Plaintiff Simonian and other aggrieved employees
18 incurred necessary, business-related expenses and costs that were not reimbursed by HIT
19 MOBILE. These costs include, but are not limited to, the use their personal cell phones for work
20 purposes, including the ADP application. Accordingly, HIT MOBILE was in violation of
21 California Labor Code sections 2800 and 2802.

22 29. Plaintiff Simonian, who is of Armenian descent, started working for Hit Mobile in late
23 2018. On or around November 25, 2019, Plaintiff Simonian was forced to quit his employment
24 because he found out that he was about to get fired for allegedly helping an Armenian
25 customer commit fraud against Hit Mobile. The company's basis for terminating Plaintiff
26 Simonian was that Plaintiff Simonian had helped the Armenian customer in processing
27 transactions and that this somehow made Plaintiff Simonian complicit in the fraud. It is
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important to note that several other employees, who were not of Armenian descent, also helped this Armenian customer in processing allegedly fraudulent transactions, but those employees were not reprimanded or terminated. Due to the fact that Plaintiff Simonian is Armenian, Hit Mobile assumed that Plaintiff Simonian would be engaging in the fraud and benefitting from the fraud in aiding the Armenian customer. Hit Mobile used stereotypes and generalizations to attribute fault to Plaintiff Simonian and to force him to quit his employment (since he did not want a termination on his record), simply due to the fact that Plaintiff Simonian is Armenian.

30. On October 7, 2020, Plaintiffs filed a complaint with the Department of Fair Employment and Housing (“DFEH”), alleging claims in this complaint. The DFEH immediately issued to Plaintiffs a right to sue letter.

FIRST CAUSE OF ACTION

DISCRIMINATION ON THE BASIS OF RACE, NATIONAL ORIGIN, AND/OR ANCESTRY IN VIOLATION OF FEHA

(Plaintiffs against All Named Defendants and all DOE defendants)

31. Plaintiffs re-allege and incorporate by reference each and every allegation in paragraphs 1 through 30, inclusive, of this Complaint as though fully set forth herein.

32. Defendant HIT MOBILE and DOES 1 to 25, inclusive, are covered employers under California’s Fair Employment and Housing Act.

33. At all times herein mentioned, FEHA, Government Code section 12940, et seq., was in full force and effect and was binding on Defendant.

34. The FEHA statute requires Defendant to refrain from discriminating against an employee because of the employee’s race/ethnicity/national origin, among other things.

35. Plaintiffs, who were Armenian employee, were subjected to adverse employment action based upon their race, national origin, and/or ancestry by the termination of their employment. This adverse employment act was based on and substantially motivated in whole or in part by

1 purposeful race/national origin discrimination, as prohibited by the laws of the State of
2 California. This cause of action is brought pursuant to FEHA and the California Constitution
3 Article 1, section 8.

4 36. In engaging in the aforementioned conduct, Defendants and DOES 1 to 25, inclusive,
5 and each of them, aided, abetted, incited, compelled, and/or coerced unlawful employment
6 practices in violation of the announced policy of this State against such practices. Furthermore,
7 they failed to take immediate and appropriate corrective action to prevent this discrimination.

8 37. As a direct and proximate result of the aforementioned acts and omissions of
9 Defendants, Plaintiffs suffered general and compensatory damages, including but not limited
10 to, loss of income (past and future), loss of employment benefits (past and future), general and
11 compensatory damages (past and future), mental pain and anguish and emotional distress (past
12 and future), and will continue to suffer in the future, in an amount to be proved at trial.

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14 38. The foregoing conduct engaged in by Defendants and DOES 1 to 25, inclusive, and
15 each of their directors, officers and/or managing agents, constitutes malice, fraud, and
16 oppression and was authorized, ratified, and carried on with a conscious and willful disregard
17 of their workers' right to work in an environment in which personnel decisions and company
18 policies are made without regard to race, so as to justify the imposition of punitive damages to
19 punish and set an example of said Defendants.

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21 39. As a proximate result of the foregoing conduct, which violated the provisions of
22 Government Code section 12940, et seq., Plaintiffs have been forced to and will incur
23 attorney's fees and costs in the prosecution of this claim, in an amount to be proven at trial.

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SECOND CAUSE OF ACTION

FAILURE TO PREVENT DISCRIMINATION IN VIOLATION OF FEHA

(Plaintiffs against All Named Defendants and all DOE defendants)

40. Plaintiffs re-allege and incorporate by reference each and every allegation in paragraphs 1 through 39, inclusive, of this Complaint as though fully set forth herein.

41. At all times herein mentioned, FEHA, California Government Code section 12940(k), was in full force and effect and was binding on Defendants. This statute states that it is an unlawful employment practice in California for an employer to “fail to take all reasonable steps necessary to prevent discrimination and harassment from occurring.”

42. During the course of Plaintiffs’ employment, Defendant HIT MOBILE failed to prevent their employees from engaging in intentional actions that resulted in Plaintiffs being treated less favorably and eventually being terminated because of Plaintiffs’ protected status (i.e. their race/national origin/ancestry). During the course of Plaintiffs’ employment, Defendant failed to prevent their employees from engaging in unjustified employment practices against employees in such protected classes. During the course of Plaintiffs’ employment, Defendant failed to prevent a pattern and practice by its employees of intentional discrimination and harassment on the basis of race and/or other protected status and/or protected activity.

43. Plaintiffs believe and on that basis allege that their race and other protected status and/or protected activity was a substantial motivating factor in Defendants’ employees’ discriminating against them and harassing them.

44. As a direct and proximate result of the aforementioned acts and omissions of Defendant, Plaintiffs suffered general and compensatory damages, including but not limited to, loss of income (past and future), loss of employment benefits (past and future), general and

1 compensatory damages (past and future), mental pain and anguish and emotional distress (past
2 and future), and will continue to suffer in the future, in an amount to be proved at trial.

3 45. The foregoing conduct engaged in by Defendant and DOES 1 to 25, inclusive, and
4 each of their directors, officers and/or managing agents, constitutes malice, fraud, and
5 oppression and was authorized, ratified, and carried on with a conscious and willful disregard
6 of their workers' right to work in an environment free of discrimination based on one's
7 race/national origin and an environment in which personnel decisions and company policies
8 are made without regard to race/national origin, so as to justify the imposition of punitive
9 damages to punish and set an example of said Defendant.
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11 46. As a proximate result of the foregoing conduct, which violated the provisions of
12 Government Code section 12940, et seq., Plaintiffs have been forced to and will incur
13 attorney's fees and costs in the prosecution of this claim, in an amount to be proven at trial.
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15 **THIRD CAUSE OF ACTION**

16 **WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY**

17 **(Plaintiffs Against All Named and DOE Defendants, and each of them)**

18 47. Plaintiffs re-allege and incorporate by reference each and every allegation in
19 paragraphs 1 through 46, inclusive, of this Complaint as though fully set forth herein.

20 48. The employment of Plaintiffs was wrongfully terminated on November 25, 2019 in
21 violation of the fundamental public policy of the State of California with respect to
22 discriminating against an employee on account of his race/national origin. Moreover, Plaintiffs
23 were forced to hire an attorney to assist them to end these illegal activities. Said conduct
24 violated statutory and constitutional expressions of public policy including, but not limited to,
25 California Government Code sections 12940 et seq., and the California Constitution, Article 1
26 section 8.

27 49. As set forth above, said actions by Defendant and DOES 1 to 25, inclusive, and each
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1 of them, were wrongful and in violation of the fundamental principles of the public policy of
2 the State of California as reflected in its laws, objectives and policies. Said statutes and
3 constitutional expressions of public policy include, but are not limited to, California
4 Government Code sections 12940 et seq., and the California Constitution, Article 1 section 8.
5 These laws inure to the benefit of the public at large, and not just the private interests of the
6 employers and employees whom they govern or protect.

7 50. As a direct and proximate result of the aforementioned acts and omissions of
8 Defendant, Plaintiffs suffered general and compensatory damages, including but not limited to,
9 loss of income (past and future), loss of employment benefits (past and future), general and
10 compensatory damages (past and future), mental pain and anguish and emotional distress (past
11 and future), and will continue to suffer in the future, in an amount to be proved at trial.

12 51. The foregoing conduct engaged in by Defendants and DOES 1 to 25, inclusive, and
13 each of their directors, officers and/or managing agents, constitutes malice, fraud, and
14 oppression and was authorized, ratified, and carried on with a conscious and willful disregard
15 of their workers' right to work in an environment in which personnel decisions and company
16 policies are made without regard to race/national origin, so as to justify the imposition of
17 punitive damages to punish and set an example of said Defendant.

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19 **FOURTH CAUSE OF ACTION**

20 **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

21 **(Plaintiffs against all named defendants and all DOE defendants)**

22 52. Plaintiffs re-allege and incorporate by reference each and every allegation in
23 paragraphs 1 through 51, inclusive, of this Complaint as though fully set forth herein.

24 53. Defendant's discriminatory actions against Plaintiffs constituted severe and outrageous
25 misconduct and caused Plaintiffs extreme emotional distress.

26 54. Defendant was aware that treating Plaintiffs in the manner alleged above, including
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1 depriving Plaintiffs of their livelihood, would devastate Plaintiffs and cause Plaintiffs extreme
2 hardship.

3 55. As a direct and proximate result of the aforementioned acts and omissions of
4 Defendant, Plaintiffs have been caused to and did in fact suffer severe and extreme mental and
5 emotional distress, including but not limited to, anguish, humiliation, embarrassment, loss of
6 confidence, fright, depression, and anxiety, the exact nature and extent of which are not now
7 known to them, but in an amount to be proved at trial.

8 56. Defendant's misconduct was done intentionally, in a malicious, fraudulent, oppressive
9 manner, entitling Plaintiffs to punitive damages.

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11 **FIFTH CAUSE OF ACTION**

12 **NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS**

13 **(Plaintiffs against all named defendants and all DOE defendants)**

14 57. Plaintiffs re-allege and incorporate by reference each and every allegation in
15 paragraphs 1 through 56, inclusive, of this Complaint as though fully set forth herein.

16 58. As an employee of Defendant, Plaintiffs were owed a duty of care by Defendant, and
17 each of them, to ensure that Plaintiffs were not exposed to foreseeable harms.

18 59. Defendant knew, or should have known, that Plaintiffs were being subjected to
19 discrimination, and that, the failure to exercise due care to prevent a discriminatory course of
20 conduct could and would cause Plaintiffs to suffer severe emotional distress.

21 60. Defendant HIT MOBILE failed to exercise its duty of care to prevent its
22 employees, managers, supervisors, and/or officers from discriminating against Plaintiffs based
23 on their race/national origin.

24 61. As a direct and proximate result of the aforementioned acts and omissions of
25 Defendant, Plaintiffs have been caused to and did in fact suffer severe and extreme mental and
26 emotional distress, including but not limited to, anguish, humiliation, embarrassment, loss of
27 confidence, fright, depression, and anxiety, the exact nature and extent of which are not now
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known to them, but in an amount to be proved at trial.

62. By the aforesaid acts and omissions of Defendant, Plaintiffs have been directly and legally caused to suffer damages as alleged herein.

SIXTH CAUSE OF ACTION

FAILURE TO COMPENSATE FOR ALL HOURS WORKED

(California Industrial Welfare Commission Order 4-2001/7-2001, California Code of Regulations Title 8 Section 11040/11070, and California Labor Code Section 1198)

(Plaintiffs against all named defendants and all DOE defendants)

63. Plaintiffs re-allege and incorporate by reference each and every allegation in paragraphs 1 through 62, inclusive, of this Complaint as though fully set forth herein.

64. At all times relevant herein, Defendant was required to compensate its employees for all hours worked upon reporting for work at the appointed time stated by the employer pursuant to Industrial Welfare Commission Order 4-2001, California Code of Regulations, Title 8, Section 11040 and/or Industrial Welfare Commission Order 7-2001, California Code of Regulations, Title 8, Section 11070.

65. For the three (3) years preceding filing of this action, Defendants failed to compensate Plaintiffs for all hours worked.

66. Under the aforementioned wage order and regulations, Plaintiffs are to recover compensation for all hours worked but not paid by Defendants for the three (3) years preceding the filing of this Complaint.

67. As a proximate result of the aforementioned violations, Plaintiffs have been damaged in an amount according to proof at time of trial, but in an amount in excess of the jurisdiction of this Court.

68. Defendants' conduct described herein violates Labor Code Section 512, 558, 1194, and 1198. Therefore, pursuant to Labor Code Sections 218.5, 512, 558, and 1194, Plaintiffs are entitled to recover damages for the nonpayment of wages for all hours worked, penalties, plus reasonable attorney's fees and costs of suit.

1 69. Under this cause of action, Plaintiffs pray for penalties due under the statutes alleged
2 along with any allowable interest, penalties, attorney's fees, and costs which will equal an
3 amount known to Plaintiffs once they have obtained all of their payroll records from
4 Defendants.

5
6 **SEVENTH CAUSE OF ACTION**

7 **FAILURE TO PAY MINIMUM WAGES**

8 **(California Labor Code Sections 1194, 1194.2, 1197)**

9 **(Plaintiffs against all named defendants and all DOE defendants)**

10 70. Plaintiffs re-allege and incorporate by reference each and every allegation in
11 paragraphs 1 through 69, inclusive, of this Complaint as though fully set forth herein.

12 71. Pursuant to Labor Code Sections 1194, 1194.2 and 1197, it is unlawful for an employer
13 to suffer or permit a California employee to work without paying wages at the minimum wage
14 rate for all hours worked as required by the applicable Industrial Welfare Commission
15 (hereinafter "IWC") Wage Order No. 4-2001, codified at California Code of Regulations, Title
16 8, Section 11040, subdivision 4 and/or Wage Order No. 7-2001, codified at California Code of
17 Regulations, Title 8, Section 11070, subdivision 4.

18 72. Pursuant to IWC Wage Order no. 4-2001 and/or 7-2001, subdivision 2(K), at all
19 relevant times, "hours worked" included "the time during which an employee is subject to the
20 control of an employer, and includes all the time the employee is suffered or permitted to work,
21 whether or not required to do so..."

22 73. During their employment, Plaintiffs were regularly required as a matter of uniform
23 policy and practice to work, and in fact worked, as an employee of Defendant and Plaintiffs
24 were paid less than the minimum wage rate by Defendant for hours worked in violation of
25 California Labor Code Section 1197 and the applicable California Industrial Wage
26 Commission wage order(s).

27 74. Plaintiffs were, at all relevant times, under the control of Defendant and suffered or
28

1 permitted to work by Defendant. Defendant's acts or omissions in failing to adequately
2 compensate Plaintiffs were not in good faith nor were there reasonable grounds for Defendants
3 to believe that their acts or omissions were not contrary to California law.

4 75. For all hours worked by Plaintiffs for which they were paid less than the minimum
5 wage rate by Defendants, Plaintiffs are entitled to not less than the applicable California
6 minimum wage rate and, pursuant to Labor Code Section 1194.2(a), liquidated damages in an
7 amount equal to unpaid minimum wages and interests thereon. Pursuant to Labor Code Section
8 1194, Plaintiffs are also entitled to attorney's fees, costs and interests according to proof.

9 76. Under this cause of action, Plaintiffs pray for penalties due under the statutes alleged
10 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
11 trial.

12 **EIGHTH CAUSE OF ACTION**

13 **FAILURE TO PAY OVERTIME**

14 **(California Industrial Welfare Commission Order 4-2001/7-2001, California Code of**
15 **Regulations Title 8 Section 11040/11070)**

16 **(Plaintiffs against all named defendants and all DOE defendants)**

17 77. Plaintiffs re-allege and incorporate by reference each and every allegation in
18 paragraphs 1 through 76, inclusive, of this Complaint as though fully set forth herein.

19 78. Pursuant to Industrial Welfare Commission Order No. 4-2001, California Code of
20 Regulations, Title 8, Section 11040 and/or Industrial Welfare Commission Order No. 7-2001,
21 California Code of Regulations, Title 8, Section 11070, for the period of Plaintiffs'
22 employment, Defendants were required to compensate Plaintiffs for all overtime, which is
23 calculated at one and one-half (1.5) times the regular rate of pay for hours worked in excess of
24 eight (8) in a day or forty (40) hours in a week, and two (2) times the regular rate of pay for
25 hours worked in excess of twelve (12) hours in a day or hours worked in excess of eight (8) on
26 the seventh consecutive workday in a week.

27 79. Plaintiffs were a non-exempt employee entitled to the protections of the California
28

1 Industrial Welfare Commission Order No. 4-2001, California Code of Regulations, Title 8,
2 Section 11040 and/or California Industrial Welfare Commission Order No. 7-2001, California
3 Code of Regulations, Title 8, Section 11070.

4 80. Plaintiffs worked more than eight (8) hours in a single workday or forty (40) hours in a
5 single workweek on numerous occasions.

6 81. Plaintiffs worked more than twelve (12) hours in a single workday.

7 82. Plaintiffs were entitled to the above overtime premiums.

8 83. Defendants did not pay Plaintiffs premium wages of at least one and one-half times
9 Plaintiffs' regular rate of pay for hours worked past eight (8) in a day.

10 84. Defendants did not pay Plaintiffs premium wages of at least one and one-half times
11 Plaintiffs' regular rate of pay for hours worked past forty (40) in a week.

12 85. Defendants did not pay Plaintiffs premium wages of at least two times Plaintiffs'
13 regular rate of pay for hours worked past twelve (12) in a day.

14 86. Plaintiffs worked at least one pay period in which they were not properly paid overtime
15 within the three (3) years prior to the initiation of this lawsuit.

16 87. Defendants know or should know the actual dates of overtime worked, the amount of
17 overtime worked, and the amount of unpaid overtime due.

18 88. As a proximate result of Defendants' violations, Plaintiffs have been damaged in an
19 amount according to proof at time of trial, but in an amount in excess of the jurisdiction of this
20 Court.

21 89. Pursuant to California Labor Code Sections 218.6, 510, 1194, and California Code of
22 Regulations, Title 8, Sections 11040 and/or 11070, Plaintiffs are entitled to recover damages
23 for the nonpayment of overtime premiums for all overtime hours worked, penalties, interest,
24 plus reasonable attorney's fees and costs of suit.

25 90. Under this cause of action, Plaintiffs pray for penalties due under the statutes alleged
26 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
27 trial.

28 ///

1 **NINTH CAUSE OF ACTION**

2 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

3 **(California Labor Code Section 226)**

4 **(Plaintiffs against all named defendants and all DOE defendants)**

5 91. Plaintiffs re-allege and incorporate by reference each and every allegation in
6 paragraphs 1 through 90, inclusive, of this Complaint as though fully set forth herein.
7

8 92. Pursuant to California Labor Code Section 226, every employer must furnish each
9 employee an itemized statement of wages and deductions at the time of payment of wages.

10 93. Defendants knowingly and intentionally did not furnish Plaintiffs with any pay stubs
11 that accurately reflected all information required by Labor Code Section 226, including but not
12 limited to, accurate figures for gross wages earned, net wages earned, total hours worked by
13 the employee (regular and overtime), all deductions, premium pay for missed rest breaks
14 and meal breaks, the correct start and end of the pay period, the correct name and address of
15 the legal employer, and business expense reimbursement. Therefore, Defendants failed to
16 maintain and provide accurate itemized wage statements to Plaintiffs in accordance with
17 California Labor Code Section 226(a).

18 94. Pursuant to California Labor Code Section 226(e), Plaintiffs are entitled to recover the
19 greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation
20 occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay
21 period, not exceeding an aggregate amount of four thousand dollars (\$4,000), plus costs and
22 reasonable attorney's fees. Plaintiffs only claim damages under this cause of action pursuant to
23 the 1-year period immediately preceding the date this lawsuit was filed.

24 95. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs have
25 sustained damages, including loss of earnings, in an amount to be established at trial. As a
26 further direct and proximate result of Defendants' unlawful conduct, as set forth herein,
27 Plaintiffs are entitled to recover penalties, in an amount to be established at trial, as well as
28 costs and attorney's fees pursuant to statute.

1 96. Under this cause of action, Plaintiffs pray for penalties due under the statutes alleged
2 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
3 trial.

4 **TENTH CAUSE OF ACTION**

5 **FAILURE TO PAY WAGES WHEN EMPLOYMENT ENDS**

6 **(California Labor Code Sections 201, 203)**

7 **(Plaintiffs against all named defendants and all DOE defendants)**

8 97. Plaintiffs re-allege and incorporate by reference each and every allegation in
9 paragraphs 1 through 96, inclusive, of this Complaint as though fully set forth herein.

10 98. Pursuant to California Labor Code Section 201(a), an employer who discharges an
11 employee must immediately pay for all compensation due and owing.

12 99. Pursuant to California Labor Code Section 202, when an employee resigns, the
13 employer must pay all compensation due and owing within 72 hours of resignation, or on the
14 employee's last day of work, if the employee gives more than 72 hours notice of resignation.

15 100. Pursuant to California Labor Code Section 203, if an employer willfully fails to pay,
16 without abatement or reduction, any wages of an employee whose employment ends, the wages
17 of the employee shall continue as a penalty from the due date at the same rate until paid or until
18 an action is commenced; however, the wages shall not continue for more than 30 days for
19 failure to pay an employee owed wages.

20 101. After Plaintiffs' employment with Defendants ended, Defendants willfully refused and
21 continue to refuse to pay both Plaintiffs unpaid wages as required by Labor Code Section 203.

22 102. Under this cause of action, Plaintiffs pray for penalties due under the statutes alleged
23 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
24 trial. Moreover, Plaintiffs prays for the above-mentioned money from 3 years immediately
25 preceding the filing of this lawsuit.

26 103. Under this cause of action, Plaintiffs also pray for attorney's fees and costs under
27 California Labor Code Section 218.5 for time spent pursuing the non-payment of wages as set
28

1 forth herein. Plaintiffs also pray for interest under California Labor Code Section 218.6.

2 104. Under this cause of action, Plaintiffs pray for penalties due under the statutes alleged
3 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
4 trial.

5 **ELEVENTH CAUSE OF ACTION**

6 **FAILURE TO PAY WAGES OWED EVERY PAY PERIOD**

7 **(California Labor Code Section 204)**

8 **(Plaintiffs against all named defendants and all DOE defendants)**

9 105. Plaintiffs re-allege and incorporate by reference each and every allegation in
10 paragraphs 1 through 104, inclusive, of this Complaint as though fully set forth herein.

11 106. California Labor Code Section 204 establishes the fundamental right of all employees
12 in the State of California to be paid wages in a timely fashion for their work.

13 107. At all times relevant during the liability period, Defendants failed to pay Plaintiffs the
14 full amount of all owed wages when due as required by California Labor Code Section 204.

15 108. Defendants failed to pay Plaintiffs all wages earned each pay period. Plaintiffs are
16 informed, believes, and thereon allege, that all times relevant during the liability period,
17 Defendants maintained a policy or practice of not paying Plaintiffs wages for all hours worked,
18 including overtime hours and the minimum wage as well as premiums for missed rest breaks
19 and meal breaks.

20 109. As a result of Defendants' unlawful conduct, Plaintiffs have suffered damages in an
21 amount, subject to proof, to the extent they were not paid all wages each pay period. The
22 precise amount of unpaid wages is not presently known to Plaintiffs but can be determined
23 directly from Defendants' records or indirectly based on information from Defendants'
24 records.

25 110. Under this cause of action, Plaintiffs pray for penalties due under the statutes alleged
26 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
27 trial.
28

TWELFTH CAUSE OF ACTION
VIOLATION OF LABOR CODE SECTION 558
(California Labor Code Section 558)

(Plaintiffs against all named defendants and all DOE defendants)

111. Plaintiffs re-allege and incorporate by reference each and every allegation in paragraphs 1 through 110, inclusive, of this Complaint as though fully set forth herein.

112. California Labor Code Section 558 states that any person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty for any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. The civil penalty for each subsequent violation is one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. Plaintiffs claims penalties for five (5) years immediately preceding the date this lawsuit was filed.

113. Plaintiffs hereby allege that named Defendants violated Labor Code Section 558. Thus, Defendants are subject to civil penalties under the following laws:

- a. California Labor Code Section 558. Defendants failed to pay Plaintiffs regular and overtime wages for overtime hours worked. As such, Defendants violated Section 558 under which penalties are due. Plaintiffs therefore pray for penalties of \$50.00 for the first pay period and \$100.00 for each subsequent violation for each pay period for which Plaintiffs were underpaid in addition to an amount sufficient to recover underpaid wages.
- b. California Labor Code Section 218.5 for recovery of costs and attorney's fees for

1 relief associated with Plaintiffs' prosecution of this cause of action under California
2 Labor Code Sections 200, et seq. Defendants knowingly violated labor laws by not
3 paying Plaintiffs for their overtime hours worked and for all hours worked.

- 4 c. California Labor Code Section 211 and 218.5 for recovery of costs and attorney's
5 fees for relief associated with Plaintiffs' prosecution of this cause of action under
6 California Labor Code Sections 200, et seq.

7 114. Under this cause of action, Plaintiffs pray for all penalties and pay otherwise due
8 under the statutes, regulations, and wage orders alleged in this cause of action along with any
9 allowable interest, penalties, attorney's fees, and costs according to proof at trial.

10 115. Plaintiffs also pray for Labor Code Section 211 and 218.5 recovery of costs and
11 attorney's fees for the time Plaintiffs' attorney spent prosecuting this cause of action.

12 **THIRTEENTH CAUSE OF ACTION**

13 **FAILURE TO MAINTAIN ACCURATE RECORDS**

14 **(California Labor Code Section 1174(d))**

15 **(Plaintiffs against all named defendants and all DOE defendants)**

16 116. Plaintiffs re-allege and incorporate by reference each and every allegation in
17 paragraphs 1 through 115, inclusive, of this Complaint as though fully set forth herein.

18 117. Labor Code section 1174(d) requires that employers, including Defendants, maintain
19 accurate records showing the hours worked daily by its employees and to whom wages were
20 paid.
21

22 118. Additionally, the "Records" section of the applicable IWC Wage Order obligates the
23 employer, including Defendants, to keep accurate information with respect to each one of their
24 employees including, but not limited to, the total wages paid each payroll period, and time
25 records showing when the employee begins and ends each work period, meal periods, split
26 shift intervals; the total daily hours worked; the total hours worked in the payroll period, and
27 the applicable rates of pay.
28

1 119. Pursuant to Labor Code section 1174.5, any person employing labor who willfully fails
2 to maintain accurate and complete records required by Labor Code section 1174(d) is subject
3 to a penalty. On information and belief, Defendants intentionally failed to maintain accurate
4 records of Plaintiffs' total daily hours, the total hours worked in the payroll period, the
5 applicable rates of pay, and total wages earned for the payroll period.

6 120. As a direct result of Defendants' violations alleged herein, Plaintiffs have suffered and
7 continues to suffer substantial losses related to Defendants' failure to record and maintain
8 records of meal and rest periods as well as time records.

9 121. Plaintiffs seek all available remedies for Defendants' violations including, but not
10 limited penalties, and costs to the extent permitted by law and according to proof at trial.

11 **FOURTEENTH CAUSE OF ACTION**

12 **FAILURE TO GIVE REST BREAKS**

13 **(Plaintiffs against all named defendants and all DOE defendants)**

14 122. Plaintiffs re-allege and incorporate by reference each and every allegation in
15 paragraphs 1 through 121, inclusive, of this Complaint as though fully set forth herein.

16 123. Plaintiffs bring this cause of action under the following laws, for the following
17 reasons:

- 18 a. Title 8 of the California Code of Regulations Sections 11040(12)(A) and/or
19 11070(12)(A), which provide that every employer shall authorize and permit all
20 employees to take rest periods, which insofar as practicable shall be in the middle of
21 each work period. The authorized rest period time shall be based on the total hours
22 worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major
23 fraction thereof;
24
25 b. Title 8 of the California Code of Regulations Sections 11040(12)(B) and/or
26 11070(12)(B), which provides that if an employer fails to provide an employee a
27 rest period in accordance with the applicable provisions of this order, the employer
28

1 shall pay the employee one (1) hour of pay at employee's regular rate of
2 compensation for each workday that the rest period is not provided;

3 c. Title 8 of the California Code of Regulations sections 11040(20)(A) and/or
4 11070(20)(A), which penalizes the employer \$50.00 for each initial violation, per
5 employee, of any provision of the Wage Order, and \$100.00 for each additional
6 violation thereafter per employee; and

7
8 d. California Labor Code section 226.7, which states that (a) no employer shall require
9 any employee to work during any rest period mandated by an applicable order of
10 the Industrial Welfare Commission, and (b) if an employer fails to provide an
11 employee a rest period in accordance with an applicable order of the Industrial
12 Welfare Commission, the employer shall pay the employee one (1) additional hour
13 of pay at employee's regular rate of compensation for each work day that the rest
14 period is not provided.

15 124. Plaintiffs allege that they were not authorized and permitted to take a ten (10) minute
16 rest break after every four (4) hours of work or major fraction thereof, as required by California
17 law.
18

19 125. Under this cause of action, Plaintiffs pray for wages due to them under the statutes,
20 regulations, and wage orders alleged in this cause of action along with any allowable interest,
21 penalties, attorney's fees and costs according to proof at trial. Specifically, Plaintiffs pray for
22 the foregoing moneys calculated from 3 years immediately preceding the filing of this lawsuit.
23

24 126. Plaintiffs also pray for Labor Code section 218.5 recovery of costs and attorney's
25 fees as well as interest under Labor Code section 218.6.

26 127. Under this cause of action, Plaintiffs pray for penalties due under the statutes alleged
27 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
28 trial.

1
2 **FIFTEENTH CAUSE OF ACTION**

3 **FAILURE TO GIVE MEAL BREAKS**

4 **(Plaintiffs against all named defendants and all DOE defendants)**

5 128. Plaintiffs re-allege and incorporate by reference each and every allegation in
6 paragraphs 1 through 127, inclusive, of this Complaint as though fully set forth herein.

7 129. Plaintiffs brings this cause of action under the following laws, for the following
8 reasons:
9

- 10 a. California Labor Code section 512(a), which requires that employees be given a 30-
11 minute uninterrupted meal break after five (5) hours of work, and a second
12 uninterrupted meal break after ten (10) hours of work;
- 13 b. California Labor Code section 226.7, which states that (a) no employer shall require
14 any employee to work during any meal period mandated by an applicable order of
15 the Industrial Welfare Commission, and (b) if any employer fails to provide an
16 employee a meal period in accordance with an applicable order of the Industrial
17 Welfare Commission, the employer shall pay the employee one (1) additional hour
18 of pay at the employee's regular rate of compensation for each workday that the
19 meal period is not provided;
- 20 c. California Industrial Welfare Commission Order No. 4 and/or 7 section 11(B), as
21 codified under Title 8 of the California Code of Regulations Section 11040 and/or
22 11070, which state that if an employer fails to provide an employee a meal period in
23 accordance with the applicable provisions of the Wage Order, the employer shall
24 pay the employee one (1) hour of pay at the employee's regular rate of
25 compensation for each workday that the meal period is not provided;
26
27
28

- 1 d. California Industrial Welfare Commission Wage Order No. 4 and/or 7 Section
2 7(A)(3), as codified under Title 8 of the California Code of Regulations Section
3 11040 and/or 11070, which require an employer to maintain records documenting
4 its employees' meal periods;
- 5 e. California Industrial Welfare Commission wage order No. 4 and/or 7 Section
6 20(A), as codified under California Code of Regulations Section 11040 and/or
7 11070, which penalizes the employer \$50.00 for each initial violation, per
8 employee, of any provision of the Wage Order, and \$100.00 for each additional
9 violation thereafter per employee; and
- 10 f. California Labor Code section 1171 and 1173, which have given the California
11 Labor Commission jurisdiction to enact Wage Orders (such as Wage Order nos. 4
12 and/or 7) as enforceable law.

13
14 130. Plaintiffs allege that they were not authorized and permitted to take relieved meal
15 breaks after five (5) hours of work. Plaintiffs further allege that they were not authorized and
16 permitted to take a second relieved meal break after ten (10) hours of work, as required by
17 California law. California Labor Code section 512(a) and California Industrial Welfare
18 Commission Order No. 4 and/or 7, as codified under California Code of Regulations Sections
19 11040 and/or 11070 et. seq., require that employees receive uninterrupted meal periods every
20 five (5) hours of consecutive work, and that the meal period be at least 30 minutes in length,
21 wherein employee is relieved of all work duty. California Labor Code section 226.7 provides
22 that employers may not require their employees to work through their meal periods. California
23 Labor Code section 226.7 and California Code of Regulations section 11040 and/or 11070
24 require that if the employer fails to provide the employee with an uninterrupted meal period,
25
26
27
28

1 the employer must pay the employee one (1) hour of pay for each workday that the meal period
2 is not given.

3 131. Under this cause of action, Plaintiffs pray for wages due to them under the statutes,
4 regulations, and wage orders alleged in this cause of action along with any allowable interest,
5 penalties, attorney's fees and costs according to proof at trial. Specifically, Plaintiffs pray for
6 the foregoing moneys calculated from 3 years immediately preceding the filing of this lawsuit.

7 132. Plaintiffs also pray for Labor Code section 218.5 recovery of costs and attorney's
8 fees as well as interest under Labor Code section 218.6.

9 133. Under this cause of action, Plaintiffs pray for penalties due under the statutes alleged
10 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
11 trial.

12 **SIXTEENTH CAUSE OF ACTION**

13 **PRIVATE ATTORNEYS GENERAL ACT**

14 **Individual and Representative Claim for PAGA penalties under California Labor Code**
15 **sections 201, 202, 203, 204 and/or 204b, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5,**
16 **1194, 1197, 1198, 2802)**

17 **(Plaintiffs Against All Named Defendants and all DOE Defendants)**

18 134. Plaintiffs re-allege and incorporate by reference each and every allegation in
19 paragraphs 1 through 133, inclusive, of this Complaint as though fully set forth herein.

20 135. Pursuant to law, Plaintiffs provided the required written notice to the LWDA and
21 Defendants of the specific violations of the California Labor Code that Defendants
22 and DOE defendants have violated and continue to violate.

23 136. Pursuant to California Labor code section 2699.3, no response was received from the
24 LWDA within 65 days of the postmark date of the above-alleged letter.

25 137. Plaintiffs therefore have exhausted all administrative remedies required of them under
26 California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this
27 cause of action and pursue penalties in a representative action for Defendants' violations of the
28 Labor Code.

1 138. Pursuant to California Labor Code section 2699, any provisions of the Labor Code
2 that provides for a civil penalty to be assessed and collected by the LWDA or any of its
3 departments, divisions, commissions, boards, agencies, or employees for violation of the code
4 may, as an alternative, be recovered through a civil action brought by an aggrieved employee
5 on behalf of himself or herself and other current or former employees pursuant to the
6 procedures specified in California Labor Code section 2699.3.
7

8 139. Each Plaintiff is an “aggrieved employee” because Plaintiffs were employed by the
9 alleged violator and had one or more of the alleged violations committed against them, and
10 therefore are properly suited to represent the interests of other current and former hourly, non-
11 exempt employees who worked for HIT MOBILE in the State of California during the PAGA
12 period.
13

14 140. Based on the acts alleged above, Plaintiffs, on behalf of themselves and all other
15 hourly, non-exempt employees who worked for HIT MOBILE in the State of California during
16 the applicable PAGA period, seeks penalties under California Labor Code sections 2698 and
17 2699 because of Defendants’ violations of numerous provisions of the California Labor Code
as alleged in this Complaint.
18

19 141. Plaintiffs therefore have exhausted all administrative remedies required of them under
20 California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this
21 cause of action and pursue penalties in a representative action for Defendants’ violations of the
Labor Code.
22

23 142. California Labor Code section 2699 et seq. imposes penalties upon culpable
24 Defendants for violating the Labor Code.
25

26 143. California Labor Code section 558 establishes a civil penalty as follows: Any
27 employer or other person action on behalf of an employer who violates, or causes to be
28 violated, a section of this chapter or any provision regulating hours and days of work in any
order of the Industrial Welfare Commission (including the “Hours and Days of Work” section
29

1 of the Wage Order) shall be subject to a civil penalty of (1) for any initial violation, fifty
2 dollars (\$50) for each underpaid employee for each pay period for which the employee was
3 underpaid ...; (2) for each subsequent violation, one hundred dollars (\$100) for each underpaid
4 employee for each pay period for which the employee was underpaid ...;

5 144. Plaintiffs seek penalties for Defendants' misconduct as alleged herein as permitted by
6 law, but only those penalties that are required to be shared with the LWDA as Plaintiffs are not
7 seeking individual/victim specific relief or underpaid wages under this particular cause of
8 action.

9 145. Plaintiffs seeks penalties for Defendants' misconduct as alleged herein as permitted by
10 law. Specifically, Plaintiffs seek penalties under California Labor Code section 2699, for
11 the following:

12 Violations of California Labor Code sections 201, 202, 203, 204 and/or 204b, 210, 226,
13 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1198, 2802 via 2698 and 2699
14 and any other Labor Codes and Industrial Welfare Commission Wage Orders (Order nos. 4
15 and/or 7) violated based on the facts alleged in this Complaint.

16 146. Pursuant to Labor Code section 2698 et seq., Plaintiffs seek to recover attorney's fees,
17 costs, and civil penalties on behalf of Plaintiffs and other current and former aggrieved
18 employees as alleged herein in an amount to be shown according to proof at trial and within the
19 jurisdictional limits of this Court.

20 **SEVENTEENTH CAUSE OF ACTION**

21 **FAILURE TO REIMBURSE FOR BUSINESS EXPENSES**

22 **(Plaintiffs against all Defendants and DOE Defendants, and each of them)**

23 147. Plaintiffs re-allege and incorporate by reference each and every allegation in
24 paragraphs 1 through 146, inclusive, of this Complaint as thought fully set forth herein.

25 148. Labor Code section 2802 provides that "[a]n employer shall indemnify his or her
26 employee for all necessary expenditures or losses incurred by the employee in direct
27 consequence of the discharge of his or her duties."
28

1 149. Beginning at least 3 years prior to the filing of this complaint, in order to discharge
2 their duties for Defendant, Plaintiffs incurred reasonable and necessary expenses in the course
3 of completing their job duties, which were not reimbursed by Defendant. These expenses
4 include, but are not limited to, use of personal phones for business-related purposes. As an
5 example, Plaintiffs and others had to download an application called “Slack” on their
6 personal cell phones and use the application for work purposes, including inputting numbers into
7 the application.

8 150. Plaintiffs are entitled to reimbursement for these necessary expenditures, plus interest
9 and attorney’s fees and costs, under Labor Code section 2802.

10 **EIGHTEENTH CAUSE OF ACTION**

11 **VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 17200**

12 **(California Business and Professions Code Section 17200)**

13 **(Plaintiffs against All Named Defendants and all DOE defendants)**

14 151. Plaintiffs re-allege and incorporate by reference each and every allegation in
15 paragraphs 1 through 150, inclusive, of this Complaint as though fully set forth herein.

16 152. By virtue of the foregoing statutes, regulations, and laws, the acts of Defendant HIT
17 MOBILE constitutes unfair and unlawful business practices under California Business and
18 Professions Code Section 17200, et seq.

19 153. Defendant’s violations of California labor laws and of the FEHA statute constitutes a
20 business practice because it was done repeatedly over a significant period of time in a
21 systematic manner that was detrimental to Plaintiffs and other similarly situated aggrieved
22 employees.

23 154. For the four years preceding the filing of this action, Plaintiffs have suffered damages
24 and request damages and/or restitution of all monies and profits to be disgorged from
25 Defendant HIT MOBILE in an amount according to proof at time of trial, but in excess of the
26 jurisdiction of this Court.

27 ///

1 **PRAYER FOR RELIEF**

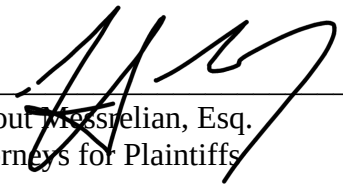
2 WHEREFORE, Plaintiffs pray for Judgment against Defendants and each of them, as
3 follows:

- 4 1. For compensatory damages including lost past and future wages, overtime,
5 commissions, and all other sums of money, including employment benefits, together
6 with interest on said amounts, and any other economic injury to Plaintiffs, according to
7 proof;
8
9 2. For general damages according to proof;
10 3. For special and consequential damages to the extent allowed by law;
11 4. For restitution and disgorgement for all unfair business practices by HIT MOBILE
12 against Plaintiffs in an amount according to proof;
13 5. For an award of punitive damages against Defendants according to proof;
14 6. For an order enjoining Defendant HIT MOBILE from further unfair and unlawful
15 business practices in violation of Business and Professions Code section 17200, et seq.;
16 7. For damages and penalties against Defendants under Labor Code section
17 226 for Plaintiffs in an amount subject to proof at trial;
18 8. For damages and penalties pursuant to Labor Code section 203 against Defendants in
19 an amount subject to proof at trial;
20 9. For maximum civil penalties available under the Labor Code and applicable Wage
21 Order against Defendants as described more particularly in the Complaint and
22 representative PAGA;
23 10. For all remedies available to Plaintiffs under the applicable Wage Order and the
24 Labor Code including an award of unpaid wages, attorney's fees, costs, interest,
25 liquidated damages, damages, penalties, and waiting time penalties according to proof
26 to the extent permitted by law;
27 11. For the imposition of civil penalties and/or statutory penalties;
28

- 1 12. Reasonable attorney's fees where available by law, including but not limited to,
2 pursuant to Labor Code section 2698 et seq., Code of Civil Procedure section 1021.5,
3 FEHA; and/or other applicable laws; and
4 12. For one hour of wages due to Plaintiffs for each work period of more than five (5)
5 hours when Plaintiffs did not receive an uninterrupted thirty (30) minute meal period.
6 14. For one hour of wages due to Plaintiffs for each work period of at least three-and-a-half
7 (3.5) hours when Plaintiffs did not receive an uninterrupted ten (10) minute rest period.
8 15. Costs and expenses of suit incurred herein;
9 16. For all interest as allowed by law;
10 17. For such other and further relief as the Court deems just and proper.
11

12 **DATED:** November 6, 2020

MESSRELIAN LAW INC.

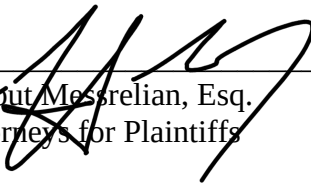
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14 By 
15 Harout Messrelian, Esq.
16 Attorneys for Plaintiffs

17 **DEMAND FOR JURY TRIAL**

18 Plaintiffs hereby demand, as a matter of right, a trial by jury in this case.
19
20

21 **DATED:** November 6, 2020

MESSRELIAN LAW INC.

22
23 By 
24 Harout Messrelian, Esq.
25 Attorneys for Plaintiffs
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27
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