

MESSRELIAN LAW INC.

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

CRISTINA ASCENCIO,

Plaintiff,

vs.

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

Defendants.

CASE NO.: 20STCV35478

COMPLAINT FOR DAMAGES FOR:

- 1) **SEXUAL HARASSMENT IN VIOLATION OF FAIR EMPLOYMENT AND HOUSING ACT ("FEHA");**
- 2) **DISCRIMINATION ON THE BASIS OF SEX/GENDER IN VIOLATION OF FEHA;**
- 3) **FAILURE TO PREVENT DISCRIMINATION, HARASSMENT, AND RETALIATION IN VIOLATION OF FEHA;**
- 4) **WRONGFUL CONSTRUCTIVE DISCHARGE IN VIOLATION OF PUBLIC POLICY;**
- 5) **NEGLIGENT HIRING, RETENTION, AND SUPERVISION;**
- 6) **NEGLIGENT INFLECTION OF EMOTIONAL DISTRESS;**
- 7) **INTENTIONAL INFLECTION OF EMOTIONAL DISTRESS;**
- 8) **FAILURE TO COMPENSATE FOR ALL HOURS WORKED;**
- 9) **FAILURE TO PAY MINIMUM WAGES;**
- 10) **FAILURE TO PAY OVERTIME;**
- 11) **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS;**
- 12) **FAILURE TO PAY WAGES WHEN EMPLOYMENT ENDS;**

1) 13) FAILURE TO PAY WAGES OWED
2) EVERY PAY PERIOD;
3) 14) VIOLATION OF LABOR CODE
4) SECTION 558;
5) 15) FAILURE TO MAINTAIN
6) ACCURATE RECORDS;
7) 16) FAILURE TO PROVIDE REST
8) BREAKS;
9) 17) FAILURE TO PROVIDE MEAL
10) BREAKS;
11) 18) PRIVATE ATTORNEYS GENERAL
12) ACT ("PAGA")
13) 19) FAILURE TO REIMBURSE
14) BUSINESS EXPENSES;
15) 20) VIOLATION OF BUSINESS AND
16) PROFESSIONS CODE SECTION
17) 17200

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JURY TRIAL DEMANDED

COMES NOW Plaintiff, CRISTINA ASCENCIO (hereinafter "Plaintiff"), and alleges 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, (hereinafter collectively known as "Defendants"), do business in the County of Los Angeles, and because Defendants' obligations and liabilities arise therein, and because the work that was performed by Plaintiff in the County of Los Angeles is the subject of this action. Moreover, Plaintiff's damages sought herein exceed \$25,000.

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

3. Plaintiff is informed and believes that at all times herein mentioned, Defendant HIT MOBILE, INC. (hereinafter "HIT MOBILE") is a California corporation, doing business in the County of Los Angeles, State of California. Defendant is an entity subject to suit under

1 the California Fair Employment and Housing Act, Government Code section 12940, et. seq.
2 (“FEHA”).

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

11 5. Unless otherwise alleged in this complaint, Plaintiff is informed, and on the basis of
12 that information and belief, alleges that at all times herein mentioned, each of the remaining
13 codefendants, in doing the things hereinafter alleged, were acting within the course, scope, and
14 under the authority of their agency, employment, or representative capacity, with the consent
15 of his/her codefendants.
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17 **GENERAL ALLEGATIONS**

18 6. Plaintiff initially started working for HIT MOBILE on or around March 2019 as a Sales
19 Representative at the Panorama City store location. Plaintiff was classified as an hourly, non-
20 exempt employee and earned \$15.25/hour plus commissions.

21 7. HIT MOBILE has committed numerous code violations against Plaintiff and other
22 similarly situated aggrieved employees, defined as all hourly, non-exempt employees who
23 worked for HIT MOBILE in California during the applicable PAGA period.

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

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

26 10. Further, HIT MOBILE did not provide Plaintiff and other aggrieved employees with the
27 minimum wages to which they were entitled for work performed "off the clock", pursuant to
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1 California Labor Code sections 1194, 1197 and 1197.1. This was so because Plaintiff and others
2 would be required by management to clock out and then stay for several hours (3 hours or so)
3 and continue working. This happened to Plaintiff several times a week and was a regular
4 occurrence. Due to being short-staffed, Plaintiff would be asked to work more hours, but would
5 be instructed to clock out at the end of her regular shift and to continue working hours "off the
6 clock". The latter was also a function of management, including the District Manager, telling
7 Plaintiff and other employees that if they worked overtime, they would be written up with a final
8 written notice. As such, it was part of the company culture for employees such as Plaintiff to
9 work overtime, but to work those hours "off the clock" to avoid getting in trouble.

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

19 12. Furthermore, during the relevant time period, HIT MOBILE failed to pay Plaintiff and
20 other similarly situated aggrieved employees all wages due to them within any time period
21 specified by California Labor Code section 204. HIT MOBILE was also in violation of
22 California Labor Code section 226(a) by failing to include pertinent information on the wage
23 statements, including but not limited to, all hours worked, overtime hours worked, gross wages
24 earned, premium pay for missed meal and rest breaks, all deductions, net wages earned, and
25 reimbursement for business expenses, among others. As such, HIT MOBILE did not provide
26 Plaintiff and other similarly situated aggrieved employees with complete, accurate itemized
27 wage statements.
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1 13. HIT MOBILE violated Labor Code § 203 because it willfully failed to pay Plaintiff and
2 other similarly situated aggrieved employees their earned and due wages upon separation of
3 employment, either immediately upon involuntary termination, or within 72 hours of resignation.
4 These earned but unpaid wages include the unpaid minimum wages, overtime, premium pay for
5 missed meal and rest breaks, and business expense reimbursement, among others.

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

10 15. During the relevant time period, Plaintiff and other aggrieved employees incurred
11 necessary, business-related expenses and costs that were not reimbursed by HIT MOBILE. These
12 costs include, but are not limited to, the use their personal cell phones for work purposes. As an
13 example, Plaintiff and others would have to download an application called "Slack" on their
14 personal cell phones and use the application for work purposes, including inputting numbers into
15 the application. Accordingly, HIT MOBILE was in violation of California Labor Code sections
16 2800 and 2802.

17 16. During her employment tenure, Plaintiff was sexually harassed by District Manager,
18 Benjamin Arteaga with the harassment beginning on the first day that Plaintiff met Mr.
19 Arteaga. As the District Manager, Mr. Arteaga would come into the Panorama City store on a
20 weekly basis. While at the store, Mr. Arteaga would get into Plaintiff's personal space and
21 would consistently reiterate the fact that he was going through a nasty divorce. In fact, Mr.
22 Arteaga would mention the fact that he was no longer married every time he would frequent
23 Plaintiff's store. Furthermore, Mr. Arteaga would question Plaintiff about her dating life and
24 where she lives. Additionally, Mr. Arteaga would touch Plaintiff, tap her shoulder, touch her
25 back, and would stand behind her. Mr. Arteaga would also leer at Plaintiff in a sexual manner
26 and would consistently stare at her butt and would ask for hugs. Plaintiff would feel forced to
27 hug Mr. Arteaga since he was the District Manager and had direct control over her and her
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1 work. Mr. Arteaga would also make comments about Plaintiff's physical appearance,
2 including her hair.

3 17. Plaintiff did complain about the sexual harassment to a female co-worker named
4 "Ruth", to store management, and also to upper management, including "Pamela" or "Tamela"
5 and "Ray". Moreover, it is Plaintiff's position that HIT MOBILE was unequivocally aware that
6 Mr. Arteaga had a history of sexually harassing employees in other stores (specifically, an
7 employee named "Clarissa" at the Azusa store) but allowed him to continue working for the
8 company by transferring him to another district wherein he started harassing Plaintiff.

9 18. On or around January 30, 2020, Plaintiff was forced to quit her employment at HIT
10 MOBILE and wrote a letter of resignation wherein she stated that she could no longer work for
11 a company that tolerates sexual harassment and commits labor code violations against
12 employees, including not providing meal breaks to employees.

13 19. On September 16, 2020, Plaintiff filed a complaint with the Department of Fair
14 Employment and Housing ("DFEH"), alleging claims in this complaint. The DFEH
15 immediately issued to Plaintiff a right to sue letter.

16 **FIRST CAUSE OF ACTION**

17 **SEXUAL HARASSMENT IN VIOLATION OF FEHA**

18 **(Plaintiff against All Named Defendants and all DOE Defendants)**

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20 20. Plaintiff re-alleges and incorporates by reference each and every allegation in
21 paragraphs 1 through 22, inclusive, of this Complaint as thought fully set forth herein.

22 24. At all times herein mentioned, FEHA, Government Code section 12900, et seq., was in
23 full force and effect and was binding on Defendants. Specifically, Government Code section
24 12940(j) prohibits an employer from sexually harassing an employee on the basis of her sex.

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1 25. The actions of District Manager Benjamin Arteaga towards Plaintiff, while in the
2 course and scope of his employment with HIT MOBILE, as described herein, created a hostile
3 sexual environment which materially altered Plaintiff's working conditions and which
4 constitutes sexual harassment in violation of California Government Code section 12940(j)(1).

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

9 27. As a proximate result of the conduct of the Defendants, Plaintiff has suffered and will
10 continue to suffer damages in terms of lost wages, lost bonuses, lost benefits, and other
11 pecuniary loss according to proof. Plaintiff has also suffered and will continue to suffer
12 physical and emotional injuries, including nervousness, humiliation, depression, anguish,
13 embarrassment, fright, shock, pain, discomfort, fatigue, and anxiety. The amount of Plaintiff's
14 damages will be ascertained at trial.

15 28. In committing the foregoing acts, Defendants have been guilty of oppression, fraud,
16 and/or malice under California Civil Code section 3294, thereby entitling Plaintiff to punitive
17 damages in a sum appropriate to punish and make an example out of the foregoing Defendants.

18 29. The acts of oppression, fraud, and/or malice, were engaged in by employees of
19 Defendants. Each of the foregoing Defendants had advance knowledge of the unfitness of each
20 employee who acted with oppression, fraud, and/or malice, and/or authorized or ratified the
21 wrongful conduct for which an award of punitive damages is sought, and/or was personally
22 guilty of oppression, fraud, and/or malice. The advance knowledge and conscious disregard,
23 authorization, ratification, or act of oppression, fraud, and/or malice was committed by or on
24 part of an officer, director, or managing agent of each of the Defendants, thereby entitling
25 Plaintiff to punitive and exemplary damages against each of the Defendants in accordance with
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1 California Civil Code section 3294 in a sum appropriate to punish and make an example of
2 each Defendant.

3 30. FEHA provides for an award of reasonable attorneys' fees and costs incurred by a
4 prevailing Plaintiff in an action brought under its provisions. Plaintiff has employed and will
5 continue to employ attorneys for the initiation and prosecution of this action. Plaintiff has
6 incurred and will continue to incur attorneys' fees and costs herein. Plaintiff is entitled to an
7 award of attorneys' fees and costs.
8

9 **SECOND CAUSE OF ACTION**

10 **DISCRIMINATION ON THE BASIS OF SEX/GENDER IN VIOLATION OF FEHA**

11 **Violation of FEHA, California Government Code Sections 12900 et seq.**

12 **(Plaintiff against All Named Defendants and all DOE defendants)**

13 31. Plaintiff re-alleges and incorporates by reference each and every allegation in
14 paragraphs 1 through 30, inclusive, of this Complaint as though fully set forth herein.
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16 32. Defendants and DOES 1 to 25, inclusive, are covered employers under California's Fair
17 Employment and Housing Act.

18 33. At all times herein mentioned, FEHA, Government Code section 12940, et seq., was in
19 full force and effect and was binding on Defendants. This statute requires Defendants to refrain
20 from discriminating against any employee on account of sex/gender.

21 34. Plaintiff, a female qualified employee, was subjected to adverse employment
22 action based upon her sex/gender in the form of constructive wrongful discharge. This adverse
23 employment act was based on and substantially motivated in whole or in part by purposeful
24 sex/gender discrimination, as prohibited by the laws of the State of California. This cause of
25 action is brought pursuant to FEHA and the California Constitution Article 1, section 8.
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27 35. In engaging in the aforementioned conduct, Defendants and DOES 1 to 25, inclusive,
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1 and each of them, aided, abetted, incited, compelled, and/or coerced unlawful employment
2 practices in violation of the announced policy of this State against such practices. Furthermore,
3 they failed to take immediate and appropriate corrective action to prevent this sexual
4 harassment.

5 36. As a proximate result of the conduct of the Defendants, Plaintiff has suffered and will
6 continue to suffer damages in terms of lost wages, lost bonuses, lost benefits, and other
7 pecuniary loss according to proof. Plaintiff has also suffered and will continue to suffer
8 physical and emotional injuries, including nervousness, humiliation, depression, anguish,
9 embarrassment, fright, shock, pain, discomfort, fatigue, and anxiety. The amount of Plaintiff's
10 damages will be ascertained at trial.

11 37. In committing the foregoing acts, Defendants have been guilty of oppression, fraud,
12 and/or malice under California Civil Code section 3294, thereby entitling Plaintiff to punitive
13 damages in a sum appropriate to punish and make an example out of the foregoing Defendants.

14 38. The acts of oppression, fraud, and/or malice, were engaged in by employees of the
15 Defendants. Defendants had advance knowledge of the unfitness of each employee who acted
16 with oppression, fraud, and/or malice, and/or authorized or ratified the wrongful conduct for
17 which an award of punitive damages is sought, and/or was personally guilty of oppression,
18 fraud, and/or malice. The advance knowledge and conscious disregard, authorization,
19 ratification, or act of oppression, fraud, and/or malice was committed by or on part of an
20 officer, director, or managing agent of the Defendants, thereby entitling Plaintiff to punitive
21 and exemplary damages against the Defendants in accordance with California Civil Code
22 section 3294 in a sum appropriate to punish and make an example of the Defendants.
23

24 39. FEHA provides for an award of reasonable attorneys' fees and costs incurred by a
25 prevailing Plaintiff in an action brought under its provisions. Plaintiff has employed and will
26 continue to employ attorneys for the initiation and prosecution of this action. Plaintiff has
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1 incurred and will continue to incur attorneys' fees and costs herein. Plaintiff is entitled to an
2 award of attorneys' fees and costs.

3 **THIRD CAUSE OF ACTION**

4 **FAILURE TO PREVENT HARASSMENT, DISCRIMINATION, AND RETALIATION**

5 **IN VIOLATION OF FEHA**

6 **(Plaintiff against All Named Defendants and all DOE defendants)**

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8 40. Plaintiff re-alleges and incorporates by reference each and every allegation in
9 paragraphs 1 through 39, inclusive, of this Complaint as thought fully set forth herein.

10 41. FEHA requires employers to take "all reasonable steps necessary to prevent
11 discrimination and harassment from occurring." (Gov. Code section 12940, subd. (k)).

12 42. As alleged above, Plaintiff was subjected to harassment and discrimination.

13 43. Defendant HIT MOBILE failed to take all reasonable steps necessary to prevent
14 harassment and discrimination. In addition, Defendant HIT MOBILE failed to remedy such
15 harassment and discrimination when it realized and was informed that it was occurring.
16 Defendant HIT MOBILE further failed to train, supervise, and monitor its employees and
17 agents.

18 44. The failure of Defendant HIT MOBILE to prevent harassment and discrimination
19 created and encouraged an environment where such harassment and discrimination was
20 condoned, encouraged, tolerated, sanctioned, and/or ratified.

21 45. As a direct and proximate result of the unlawful conduct of Defendant HIT MOBILE,
22 Plaintiff has been harmed in that Plaintiff has suffered the loss of wages, salary, benefits,
23 and additional amounts of money Plaintiff would have received if Plaintiff had not been
24 discharged from her employment. As a result, Plaintiff has suffered such damages in
25 an amount according to proof.

26 46. As a further direct and proximate result of the conduct of Defendant HIT MOBILE,
27 Plaintiff has been harmed in that Plaintiff has suffered the intangible loss of employment-
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1 related opportunities. As a result, Plaintiff has suffered such damages in an amount according
2 to proof.

3 47. As a further direct and proximate result of the conduct of Defendant HIT MOBILE,
4 Plaintiff has been harmed in that Plaintiff has suffered humiliation, mental anguish, and
5 emotional distress, and has been harmed in mind and body. As a result, Plaintiff has suffered
6 such damages in an amount according to proof.

7 48. The above-recited actions of Defendant HIT MOBILE were done with malice,
8 fraud, oppression, and in reckless disregard of Plaintiff's rights under FEHA. Accordingly,
9 Plaintiff is entitled to an award of punitive damages.
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11 **FOURTH CAUSE OF ACTION**

12 **WRONGFUL CONSTRUCTIVE DISCHARGE IN VIOLATION OF PUBLIC POLICY**

13 **(Against All Named Defendants and all DOE Defendants)**

14 49. Plaintiff re-alleges and incorporates by reference each and every allegation in
15 paragraphs 1 through 48, inclusive, of this Complaint as though fully set forth herein.

16 50. At all times during her employment with Defendants, Plaintiff performed her duties
17 with the utmost diligence and competence.

18 51. Plaintiff is informed and believes and thereon alleges that Defendants' decisions to
19 harass her, as alleged herein, was motivated by Plaintiff's sex. Defendants intentionally
20 created the aforementioned harassment, thereby not giving Plaintiff an opportunity to work in
21 an environment free of harassment. This situation became intolerable for Plaintiff along with
22 the fact that Plaintiff was not able to take statutory meal breaks and Plaintiff had no alternative
23 but to resign.

24 52. The employment of Plaintiff was constructively wrongfully terminated on January 30,
25 2020 in violation of the fundamental public policy of the State of California with respect to
26 harassing and retaliating against an employee on account of her sex. Moreover, Plaintiff was
27 forced to hire an attorney to assist her to end these illegal activities. Said conduct violated
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1 statutory and constitutional expressions of public policy including, but not limited to,
2 California Government Code sections 12940 et seq., the California Labor Code, and the
3 California Constitution, Article 1 section 8.

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

11 54. As a direct and proximate result of the aforementioned acts and omissions of
12 Defendant, Plaintiff suffered general and compensatory damages, including but not limited to,
13 loss of income (past and future), loss of employment benefits (past and future), general and
14 compensatory damages (past and future), mental pain and anguish and emotional distress (past
15 and future), and will continue to suffer in the future, in an amount to be proved at trial.

16 55. The foregoing conduct engaged in by Defendant and each of its directors, officers
17 and/or managing agents, constitutes malice, fraud, and oppression and was authorized, ratified,
18 and carried on with a conscious and willful disregard of their workers' right to work in an
19 environment free of harassment and discrimination based on sex/gender, so as to justify the
20 imposition of punitive damages to punish and set an example of said Defendants.

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22 **FIFTH CAUSE OF ACTION**

23 **NEGLIGENT HIRING, RETENTION, AND SUPERVISION**

24 **(Plaintiff against All Named Defendants all DOE defendants)**

25 56. Plaintiff re-alleges and incorporates by reference each and every allegation in
26 paragraphs 1 through 55, inclusive, of this Complaint as thought fully set forth herein.

27 57. Upon information and belief, Defendant HIT MOBILE, by and through its agents and
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1 employees, knew or reasonably should have known through reasonable investigation of
2 District Manager Benjamin Arteaga's propensity for sexually harassing behavior.

3 58. Defendant HIT MOBILE had a duty not to hire or retain District Manager Benjamin
4 Arteaga given his wrongful and sexually depraved propensities, and to provide reasonable
5 supervision of District Manager Benjamin Arteaga.

6 59. Defendants negligently hired, retained and/or failed to adequately supervise District
7 Manager Benjamin Arteaga in his position as District Manager, wherein Benjamin Arteaga
8 was able to commit the wrongful acts complained of herein against Plaintiff. Defendants failed
9 to provide reasonable supervision of Benjamin Arteaga despite knowing of Arteaga's
10 propensities and the complaints made against him by other female employees.

11 60. As a result of the above-described conduct, Plaintiff has suffered and continues to
12 suffer, great pain of the mind and body, shock, emotional distress, embarrassment, loss of self-
13 esteem, disgrace, humiliation, and loss of enjoyment of life.

14 61. Defendant HIT MOBILE engaged in these acts alleged herein and/or condoned,
15 permitted, authorized, and/or ratified the conduct of its employees and agents and is vicariously
16 liable for the wrongful conduct of its employees and agents for this cause of action.

17 **SIXTH CAUSE OF ACTION**

18 **NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS**

19 **(Plaintiff against all named Defendants and all DOE defendants)**

20 62. Plaintiff re-alleges and incorporates by reference each and every allegation in
21 paragraphs 1 through 61, inclusive, of this Complaint as though fully set forth herein.

22 63. As an employee of Defendants, Plaintiff was owed a duty of care by Defendants, and
23 each of them, to ensure that Plaintiff was not exposed to foreseeable harms.

24 64. Defendants, and each of them, knew, or should have known, that Plaintiff was being
25 subjected to sexual harassment and discrimination, and that the failure to exercise due care to
26 prevent a harassing course of conduct could and would cause Plaintiff to suffer
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1 severe emotional distress.

2 65. Defendants, and each of them, failed to exercise their duty of care to prevent their
3 employees, managers, supervisors, and/or officers from harassing Plaintiff based on her
4 sex/gender as alleged above.

5 66. As a direct and proximate result of the aforementioned acts and omissions of
6 Defendants, Plaintiff has been caused to and did in fact suffer severe and extreme mental and
7 emotional distress, including but not limited to, anguish, humiliation, embarrassment, loss of
8 confidence, fright, depression, and anxiety, the exact nature and extent of which are not now
9 known to her, but in an amount to be proved at trial.

10 67. By the aforesaid acts and omissions of Defendants, and each of them, Plaintiff has been
11 directly and legally caused to suffer damages as alleged herein.

12 **SEVENTH CAUSE OF ACTION**

13 **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

14 **(Plaintiff against all named defendants and all DOE defendants)**

15 68. Plaintiff re-alleges and incorporates by reference each and every allegation in
16 paragraphs 1 through 67, inclusive, of this Complaint as though fully set forth herein.

17 69. Defendants' harassing actions against Plaintiff constituted severe and outrageous
18 misconduct and caused Plaintiff extreme emotional distress.

19 70. Defendants were aware that treating Plaintiff in the manner alleged above, including
20 forcing Plaintiff to quit her employment, would devastate Plaintiff and cause Plaintiff extreme
21 hardship.

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

1 known to her, but in an amount to be proved at trial.

2 72. Defendants' misconduct was done intentionally, in a malicious, fraudulent, oppressive
3 manner, entitling Plaintiff to punitive damages.

4 **EIGHTH CAUSE OF ACTION**

5 **FAILURE TO COMPENSATE FOR ALL HOURS WORKED**

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

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

9 73. Plaintiff re-alleges and incorporates by reference each and every allegation in
10 paragraphs 1 through 72, inclusive, of this Complaint as though fully set forth herein.

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

16 75. For the three (3) years preceding filing of this action, Defendants failed to compensate
17 Plaintiff for all hours worked.

18 76. Under the aforementioned wage order and regulations, Plaintiff is to recover
19 compensation for all hours worked but not paid by Defendants for the three (3) years
20 preceding the filing of this Complaint.

21 77. As a proximate result of the aforementioned violations, Plaintiff has been damaged in
22 an amount according to proof at time of trial, but in an amount in excess of the jurisdiction of
23 this Court.

24 78. Defendants' conduct described herein violates Labor Code Section 512, 558, 1194, and
25 1198. Therefore, pursuant to Labor Code Sections 218.5, 512, 558, and 1194, Plaintiff is
26 entitled to recover damages for the nonpayment of wages for all hours worked, penalties, plus
27 reasonable attorney's fees and costs of suit.
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1 79. Under this cause of action, Plaintiff prays 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 Plaintiff once she has obtained all of her payroll records from
4 Defendants.

5 **NINTH CAUSE OF ACTION**

6 **FAILURE TO PAY MINIMUM WAGES**

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

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

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10 80. Plaintiff re-alleges and incorporates by reference each and every allegation in
11 paragraphs 1 through 79, inclusive, of this Complaint as though fully set forth herein.

12 81. 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 82. 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 83. During her employment, Plaintiff was regularly required as a matter of uniform
23 policy and practice to work, and in fact worked, as an employee of Defendants and Plaintiff
24 was paid less than the minimum wage rate by Defendants for hours worked in violation of
25 California Labor Code Section 1197 and the applicable California Industrial Wage
26 Commission wage order(s).

27 84. Plaintiff was, at all relevant times, under the control of Defendants and suffered or
28 permitted to work by Defendants. Defendants' acts or omissions in failing to adequately

1 compensate Plaintiff were not in good faith nor were there reasonable grounds for Defendants
2 to believe that their acts or omissions were not contrary to California law.

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

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

11 **TENTH CAUSE OF ACTION**

12 **FAILURE TO PAY OVERTIME**

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

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

16 87. Plaintiff re-alleges and incorporates by reference each and every allegation in
17 paragraphs 1 through 86, inclusive, of this Complaint as though fully set forth herein.

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

26 89. Plaintiff was a non-exempt employee entitled to the protections of the California
27 Industrial Welfare Commission Order No. 4-2001, California Code of Regulations, Title 8,
28

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

3 90. Plaintiff worked more than eight (8) hours in a single workday or forty (40) hours in a
4 single workweek on numerous occasions.

5 91. Plaintiff worked more than twelve (12) hours in a single workday.

6 92. Plaintiff was entitled to the above overtime premiums.

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

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

11 95. Defendants did not pay Plaintiff premium wages of at least two times Plaintiff's regular
12 rate of pay for hours worked past twelve (12) in a day.

13 96. Plaintiff worked at least one pay period in which she was not properly paid overtime
14 within the three (3) years prior to the initiation of this lawsuit.

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

17 98. As a proximate result of Defendants' violations, Plaintiff has been damaged in an
18 amount according to proof at time of trial, but in an amount in excess of the jurisdiction of this
19 Court.

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

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

27 ///

ELEVENTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

(California Labor Code Section 226)

(Plaintiff against all named defendants and all DOE defendants)

101. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 100, inclusive, of this Complaint as though fully set forth herein.

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

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

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

105. As a direct and proximate result of Defendants' unlawful conduct, Plaintiff has sustained damages, including loss of earnings, in an amount to be established at trial. As a further direct and proximate result of Defendants' unlawful conduct, as set forth herein, Plaintiff is entitled to recover penalties, in an amount to be established at trial, as well as costs and attorney's fees pursuant to statute.

1 106. Under this cause of action, Plaintiff prays 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 **TWELFTH CAUSE OF ACTION**

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

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

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

8 107. Plaintiff re-alleges and incorporates by reference each and every allegation in
9 paragraphs 1 through 106, inclusive, of this Complaint as though fully set forth herein.

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

12 109. 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.

15 110. 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.

20 111. After Plaintiff's employment with Defendants ended, Defendants willfully refused and
21 continue to refuse to pay her unpaid wages as required by Labor Code Section 203.

22 112. Under this cause of action, Plaintiff prays 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, Plaintiff prays for the above-mentioned money from 3 years immediately
25 preceding the filing of this lawsuit.

26 113. Under this cause of action, Plaintiff also prays 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. Plaintiff also prays for interest under California Labor Code Section 218.6.

2 114. Under this cause of action, Plaintiff prays 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 **THIRTEENTH CAUSE OF ACTION**

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

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

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

9 115. Plaintiff re-alleges and incorporates by reference each and every allegation in
10 paragraphs 1 through 114, inclusive, of this Complaint as though fully set forth herein.

11 116. 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.

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

15 118. Defendants failed to pay Plaintiff all wages earned each pay period. Plaintiff is
16 informed, believes, and thereon alleges, that all times relevant during the liability period,
17 Defendants maintained a policy or practice of not paying Plaintiff 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.

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

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

27 ///

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

(Plaintiff against all named defendants and all DOE defendants)

121. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 120, inclusive, of this Complaint as though fully set forth herein.

122. 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. Plaintiff claims penalties for five (5) years immediately preceding the date this lawsuit was filed.

123. Plaintiff hereby alleges 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 Plaintiff regular and overtime wages for overtime hours worked. As such, Defendants violated Section 558 under which penalties are due. Plaintiff therefore prays for penalties of \$50.00 for the first pay period and \$100.00 for each subsequent violation for each pay period for which Plaintiff was 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 relief associated with Plaintiff's prosecution of this cause of action under California

1 Labor Code Sections 200, et seq. Defendants knowingly violated labor laws by not
2 paying Plaintiff for her overtime hours worked and for all hours worked.

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

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

9 125. Plaintiff also prays for Labor Code Section 211 and 218.5 recovery of costs an
10 attorney's fees for the time Plaintiff's attorney spent prosecuting this cause of action.

11 **FIFTEENTH CAUSE OF ACTION**

12 **FAILURE TO MAINTAIN ACCURATE RECORDS**

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

14 **(Plaintiff against all named defendants and all DOE defendants)**

15 126. Plaintiff re-alleges and incorporates by reference each and every allegation in
16 paragraphs 1 through 125, inclusive, of this Complaint as though fully set forth herein.

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

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

27 129. Pursuant to Labor Code section 1174.5, any person employing labor who willfully fails
28 to maintain accurate and complete records required by Labor Code section 1174(d) is subject

1 to a penalty. On information and belief, Defendants intentionally failed to maintain accurate
2 records of Plaintiff's total daily hours, the total hours worked in the payroll period, the
3 applicable rates of pay, and total wages earned for the payroll period.

4 130. As a direct result of Defendants' violations alleged herein, Plaintiff has suffered and
5 continues to suffer substantial losses related to Defendants' failure to record and maintain
6 records of meal and rest periods as well as time records.

7 131. Plaintiff seeks all available remedies for Defendants' violations including, but not
8 limited penalties, and costs to the extent permitted by law and according to proof at trial.

9 **SIXTEENTH CAUSE OF ACTION**

10 **FAILURE TO GIVE REST BREAKS**

11 **(Plaintiff against all named defendants and all DOE defendants)**

12 132. Plaintiff re-alleges and incorporates by reference each and every allegation in
13 paragraphs 1 through 131, inclusive, of this Complaint as though fully set forth herein.

14 133. Plaintiff brings this cause of action under the following laws, for the following
15 reasons:
16

- 17 a. Title 8 of the California Code of Regulations Sections 11040(12)(A) and/or
18 11070(12)(A), which provide that every employer shall authorize and permit all
19 employees to take rest periods, which insofar as practicable shall be in the middle of
20 each work period. The authorized rest period time shall be based on the total hours
21 worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major
22 fraction thereof;
23
- 24 b. Title 8 of the California Code of Regulations Sections 11040(12)(B) and/or
25 11070(12)(B), which provides that if an employer fails to provide an employee a
26 rest period in accordance with the applicable provisions of this order, the employer
27 shall pay the employee one (1) hour of pay at employee's regular rate of
28

1 compensation for each workday that the rest period is not provided;

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

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

14 134. Plaintiff alleges that she was not authorized and permitted to take a ten (10) minute
15 rest break after every four (4) hours of work or major fraction thereof, as required by California
16 law.
17

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

23 136. Plaintiff also prays for Labor Code section 218.5 recovery of costs and attorney's
24 fees as well as interest under Labor Code section 218.6.

25 137. Under this cause of action, Plaintiff prays 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.
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1 **SEVENTEENTH CAUSE OF ACTION**

2 **FAILURE TO GIVE MEAL BREAKS**

3 **(Plaintiff against all named defendants and all DOE defendants)**

4
5 138. Plaintiff re-alleges and incorporates by reference each and every allegation in
6 paragraphs 1 through 136, inclusive, of this Complaint as though fully set forth herein.

7 139. Plaintiff brings this cause of action under the following laws, for the following
8 reasons:

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

1 7(A)(3), as codified under Title 8 of the California Code of Regulations Section
2 11040 and/or 11070, which require an employer to maintain records documenting
3 its employees' meal periods;

4 e. California Industrial Welfare Commission wage order No. 4 and/or 7 Section
5 20(A), as codified under California Code of Regulations Section 11040 and/or
6 11070, which penalizes the employer \$50.00 for each initial violation, per
7 employee, of any provision of the Wage Order, and \$100.00 for each additional
8 violation thereafter per employee; and
9

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.

13 140. Plaintiff alleges that she was not authorized and permitted to take relieved meal breaks
14 after five (5) hours of work. Plaintiff further alleges that she was not authorized and permitted
15 to take a second relieved meal break after ten (10) hours of work, as required by California
16 law. California Labor Code section 512(a) and California Industrial Welfare Commission
17 Order No. 4 and/or 7, as codified under California Code of Regulations Sections 11040 and/or
18 11070 et. seq., require that employees receive uninterrupted meal periods every five (5) hours
19 of consecutive work, and that the meal period be at least 30 minutes in length, wherein
20 employee is relieved of all work duty. California Labor Code section 226.7 provides that
21 employers may not require their employees to work through their meal periods. California
22 Labor Code section 226.7 and California Code of Regulations section 11040 and/or 11070
23 require that if the employer fails to provide the employee with an uninterrupted meal period,
24 the employer must pay the employee one (1) hour of pay for each workday that the meal period
25 is not given.
26
27
28

1 141. Under this cause of action, Plaintiff prays for wages due to her under the statutes,
2 regulations, and wage orders alleged in this cause of action along with any allowable interest,
3 penalties, attorney's fees and costs according to proof at trial. Specifically, Plaintiff prays for
4 the foregoing moneys calculated from 3 years immediately preceding the filing of this lawsuit.

5 142. Plaintiff also prays for Labor Code section 218.5 recovery of costs and attorney's
6 fees as well as interest under Labor Code section 218.6.

7 143. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
8 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
9 trial.

10 **EIGHTEENTH CAUSE OF ACTION**

11 **PRIVATE ATTORNEYS GENERAL ACT**

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

14 **(Against All Named Defendants and all DOE Defendants)**

15 144. Plaintiff re-alleges and incorporates by reference each and every allegation in
16 paragraphs 1 through 143, inclusive, of this Complaint as though fully set forth herein.

17 145. Pursuant to law, Plaintiff provided the required written notice to the LWDA and
18 Defendants of the specific violations of the California Labor Code that Defendants
19 and DOE defendants have violated and continue to violate.

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

22 147. Plaintiff therefore has exhausted all administrative remedies required of her under
23 California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this
24 cause of action and pursue penalties in a representative action for Defendants' violations of the
25 Labor Code.

26 148. Pursuant to California Labor Code section 2699, any provisions of the Labor Code
27
28

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

6 149. Plaintiff is an “aggrieved employee” because Plaintiff was employed by the alleged
7 violator and had one or more of the alleged violations committed against her, and therefore is
8 properly suited to represent the interests of other current and former hourly, non-exempt
9 employees who worked for HIT MOBILE in the State of California during the PAGA period.

10 150. Based on the acts alleged above, Plaintiff, on behalf of herself and all other hourly,
11 non-exempt employees who worked for HIT MOBILE in the State of California during the
12 applicable PAGA period, seeks penalties under California Labor Code sections 2698 and 2699
13 because of Defendants’ violations of numerous provisions of the California Labor Code as
14 alleged in this Complaint.

15 151. Plaintiff therefore has exhausted all administrative remedies required of her under
16 California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this
17 cause of action and pursue penalties in a representative action for Defendants’ violations of the
18 Labor Code.

19 152. California Labor Code section 2699 et seq. imposes penalties upon culpable
20 Defendants for violating the Labor Code.

21 153. California Labor Code section 558 establishes a civil penalty as follows: Any
22 employer or other person action on behalf of an employer who violates, or causes to be
23 violated, a section of this chapter or any provision regulating hours and days of work in any
24 order of the Industrial Welfare Commission (including the “Hours and Days of Work” section
25 of the Wage Order) shall be subject to a civil penalty of (1) for any initial violation, fifty
26 dollars (\$50) for each underpaid employee for each pay period for which the employee was
27 underpaid ...; (2) for each subsequent violation, one hundred dollars (\$100) for each underpaid
28

1 employee for each pay period for which the employee was underpaid ...;

2 154. Plaintiff seeks penalties for Defendants' misconduct as alleged herein as permitted by
3 law, but only those penalties that are required to be shared with the LWDA as Plaintiff is not
4 seeking individual/victim specific relief or underpaid wages under this particular cause of
5 action.

6 155. Plaintiff seeks penalties for Defendants' misconduct as alleged herein as permitted by
7 law. Specifically, Plaintiff seeks penalties under California Labor Code section 2699, for
8 the following:

9 Violations of California Labor Code sections 201, 202, 203, 204 and/or 204b, 210, 226,
10 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1198, 2802 via 2698 and 2699
11 and any other Labor Codes and Industrial Welfare Commission Wage Orders (Order nos. 4
12 and/or 7) violated based on the facts alleged in this Complaint.

13 156. Pursuant to Labor Code section 2698 et seq., Plaintiff seeks to recover attorney's fees,
14 costs, and civil penalties on behalf of Plaintiff and other current and former aggrieved
15 employees as alleged herein in an amount to be shown according to proof at trial and within the
16 jurisdictional limits of this Court.

17 **NINETEENTH CAUSE OF ACTION**

18 **FAILURE TO REIMBURSE FOR BUSINESS EXPENSES**

19 **(Plaintiff against all Defendants and DOE Defendants, and each of them)**

20 157. Plaintiff re-alleges and incorporates by reference each and every allegation in
21 paragraphs 1 through 156, inclusive, of this Complaint as thought fully set forth herein.

22 158. Labor Code section 2802 provides that "[a]n employer shall indemnify his or her
23 employee for all necessary expenditures or losses incurred by the employee in direct
24 consequence of the discharge of his or her duties."

25 159. Beginning at least 3 years prior to the filing of this complaint, in order to discharge
26 their duties for Defendant, Plaintiff incurred reasonable and necessary expenses in the course
27 of completing her job duties, which were not reimbursed by Defendant. These expenses
28

1 include, but are not limited to, use of personal phones for business-related purposes. As an
2 example, Plaintiff and others would have to download an application called "Slack" on their
3 personal cell phones and use the application for work purposes, including inputting numbers into
4 the application.

5 160. Plaintiff is entitled to reimbursement for these necessary expenditures, plus interest
6 and attorney's fees and costs, under Labor Code section 2802.

7 **TWENTIETH CAUSE OF ACTION**

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

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

10 **(Plaintiff against Defendant AIM and all DOE defendants)**

11 161. Plaintiff re-alleges and incorporates by reference each and every allegation in
12 paragraphs 1 through 160, inclusive, of this Complaint as though fully set forth herein.

13 162. By virtue of the foregoing statutes, regulations, and laws, the acts of Defendant HIT
14 MOBILE constitutes unfair and unlawful business practices under California Business and
15 Professions Code Section 17200, et seq.

16 163. Defendant's violations of California labor laws constitutes a business practice because
17 it was done repeatedly over a significant period of time in a systematic manner that was
18 detrimental to Plaintiff and other similarly situated aggrieved employees.

19 164. For the four years preceding the filing of this action, Plaintiff has suffered damages
20 and request damages and/or restitution of all monies and profits to be disgorged from
21 Defendant HIT MOBILE in an amount according to proof at time of trial, but in excess of the
22 jurisdiction of this Court.

23 **PRAYER FOR RELIEF**

24 WHEREFORE, Plaintiff prays for Judgment against Defendants and each of them, as
25 follows:

- 26 1. For compensatory damages including lost past and future wages, overtime,
27 commissions, and all other sums of money, including employment benefits, together
28

- 1 with interest on said amounts, and any other economic injury to Plaintiff, according to
2 proof;
- 3 2. For general damages according to proof;
- 4 3. For special and consequential damages to the extent allowed by law;
- 5 4. For restitution and disgorgement for all unfair business practices by HIT MOBILE
6 against Plaintiff in an amount according to proof;
- 7 5. For an award of punitive damages against Defendants according to proof;
- 8 6. For an order enjoining Defendant HIT MOBILE from further unfair and unlawful
9 business practices in violation of Business and Professions Code section 17200, et seq.;
- 10 7. For damages and penalties against Defendants under Labor Code section
11 226 for Plaintiff in an amount subject to proof at trial;
- 12 8. For damages and penalties pursuant to Labor Code section 203 against Defendants in
13 an amount subject to proof at trial;
- 14 9. For maximum civil penalties available under the Labor Code and applicable Wage
15 Order against Defendants as described more particularly in the Complaint and
16 representative PAGA;
- 17 10. For all remedies available to Plaintiff under the applicable Wage Order and the
18 Labor Code including an award of unpaid wages, attorney's fees, costs, interest,
19 liquidated damages, damages, penalties, and waiting time penalties according to proof
20 to the extent permitted by law;
- 21 11. For the imposition of civil penalties and/or statutory penalties;
- 22 12. Reasonable attorney's fees where available by law, including but not limited to,
23 pursuant to Labor Code section 2698 et seq., Code of Civil Procedure section 1021.5,
24 and/or other applicable laws; and
- 25 13. For one hour of wages due to Plaintiff for each work period of more than five (5) hours
26 when Plaintiff did not receive an uninterrupted thirty (30) minute meal period.
27
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- 1 14. For one hour of wages due to Plaintiff for each work period of at least three-and-a-half
2 (3.5) hours when Plaintiff did not receive an uninterrupted ten (10) minute rest period.
3 15. Costs and expenses of suit incurred herein;
4 16. For all interest as allowed by law;
5 17. For such other and further relief as the Court deems just and proper.
6

7 DATED: September 15, 2020

MESSRELIAN LAW INC.

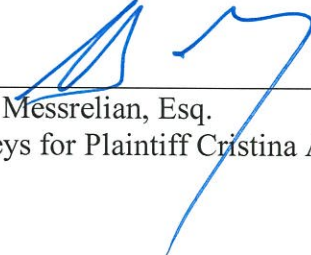
8
9 By 
10 Harout Messrelian, Esq.
11 Attorneys for Plaintiff Cristina Ascencio

12 **DEMAND FOR JURY TRIAL**

13 Plaintiff hereby demands, as a matter of right, a trial by jury in this case.
14

15 DATED: September 15, 2020

MESSRELIAN LAW INC.

16
17 By 
18 Harout Messrelian, Esq.
19 Attorneys for Plaintiff Cristina Ascencio
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