

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Maureen Duffy-Lewis

MESSRELIAN LAW INC.

Harout Messrelian, Esq., SB# 272020

500 N. Central Ave., Suite 840

Glendale, California 91203

Telephone: (818) 484-6531

Facsimile: (818) 956-1983

Attorneys for Plaintiff Maria Contreras Robles

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

MARIA CONTRERAS ROBLES,

Plaintiff,

vs.

iMOBILE OF CA LLC and DOES 1 to 25,
inclusive,

Defendants.

CASE NO.: **20STCV44359**

COMPLAINT FOR DAMAGES FOR:

**1) PRIVATE ATTORNEYS GENERAL
ACT ("PAGA")**

COMES NOW Plaintiff, MARIA CONTRERAS ROBLES (hereinafter "Plaintiff"),

and alleges as follows:

PARTIES, JURISDICTION, VENUE

1
2 1. Jurisdiction and Venue are proper in this Court and this action is properly filed in the
3 County of Los Angeles in this judicial district because Defendants iMOBILE OF CA LLC and
4 DOES 1 to 25, inclusive (hereinafter collectively known as “Defendants”), do business in the
5 County of Los Angeles and because Defendants’ obligations and liabilities arise therein, and
6 because the work that was performed by Plaintiff in the County of Los Angeles is the subject
7 of this action. Moreover, Plaintiff’s damages sought herein exceed \$25,000.

8
9 2. Plaintiff is a female resident of the County of Los Angeles, State of California.

10 3. Plaintiff is informed and believes that at all times herein mentioned, Defendant
11 iMOBILE OF CA LLC (“iMOBILE”) is and was a California limited liability corporation,
12 doing business in Los Angeles County, California, and which employed Plaintiff.

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

20
21 5. Unless otherwise alleged in this complaint, Plaintiff is informed, and on the basis of
22 that information and belief, alleges that at all times herein mentioned, each of the remaining
23 codefendants, in doing the things hereinafter alleged, were acting within the course, scope, and
24 under the authority of their agency, employment, or representative capacity, with the consent
25 of his/her codefendants.

26
27 //
28

GENERAL ALLEGATIONS

6. Plaintiff started working for IMOBILE on or around July 2017. Plaintiff initially worked from July 2017 through March 2018 and then had a gap in her employment from March 2018 through approximately August 2018. Plaintiff resumed with IMOBILE on or around September 2018 and worked consistently through December 16, 2019, at which point she was forced to quit her employment at IMOBILE. Plaintiff initially started as a Sales Representative at the Tarzana store location and was then promoted to Assistant Manager, which was an hourly, non-exempt position. Plaintiff was then promoted to Store Manager and sent to the Maywood location in March 2019. As such, Plaintiff has been classified as both a non-exempt, hourly employee as well as an exempt, salaried employee throughout her tenure at IMOBILE and is bringing PAGA claims on behalf of both categories of employees. While the Store Manager at the Maywood location, Plaintiff generally worked 6 days per week, consistently working over 8 hours per day and 40 hours per week.

7. It is Plaintiff's position that Plaintiff was misclassified as an exempt, salaried employee while she was the Store Manager at the Maywood store location. Under California law, in order for Plaintiff to be an exempt employee, she would have to fit in one of the following categories: Executive, Professional, or Administrative.

8. Plaintiff did not fit under the Executive exemption because she would not direct 2 or more other employees and she was NOT "primarily engaged in" (more than 50%) duties which met the test of exemption. Work tasks are either exempt or nonexempt as determined by the objective purpose for which the tasks are undertaken. See Heyen v. Safeway Inc. (2013) 216 CA4th 795, 826-827. In the Heyen case, *supra*, a grocery store assistant manager who spent more than half of her time bagging groceries or checking out customers was deemed to be engaged in nonexempt activities despite concurrently watching over her subordinates' work. Here, Plaintiff unequivocally spent way more than 50% of her time engaging in sales activities and selling as opposed to managing or engaging in managerial duties, such as operations/inventory. Plaintiff was forced to constantly engage in sales due to pressure from

1 IMOBILE to meet their quotas. In fact, Plaintiff was specifically and directly advised by
2 District Manager, Shant A., that she needed to sell because it was her responsibility to ensure
3 her store met quota.

4 9. Plaintiff did not fit under the Professional Exemption because her work did not fit into
5 one of the enumerated professions and is not considered a “learned or artistic profession.” As
6 far as the Administrative exemption is concerned, Plaintiff did not primarily engage in duties
7 which met the test of exemption since she was mostly on the labor side of the business.

8 10. As such, and based on the above, it is Plaintiff’s position that IMOBILE has committed
9 numerous labor code violations against Plaintiff and other similarly situated aggrieved
10 employees, including both nonexempt hourly employees and exempt hourly employees (who
11 were misclassified like Plaintiff):

12 11. IMOBILE violated Labor Code § 1194, 1194.2, 1197, and 1197.1 because it failed to pay
13 Plaintiff and other similarly situated aggrieved employees California’s statutory minimum wage
14 for all hours worked and for “off the clock” work. As the store manager, Plaintiff was not
15 compensated for the hours spent working from home after normal work hours or during off days,
16 including engaging in an activity called “prospecting” or marketing wherein Plaintiff would
17 make sure staff was placing flyers at nearby businesses. Furthermore, Plaintiff was responsible
18 for creating a Facebook page to promote the store. Plaintiff also spent her off hours driving in
19 her personal vehicle to pick up phones from various locations. Additionally, on her days off,
20 Plaintiff would be calling and emailing the Maywood store to make sales were going through.
21 Plaintiff also engaged in conference calls with District Manager Shant as well the CEO of the
22 company on her off days. Even though Plaintiff was classified as an exempt, salaried employee,
23 she still had to clock in and clock out and would in fact clock out and continue working by
24 helping customers and engaging in sales activities.

25 12. In terms of the hourly, non-exempt employees, as mentioned, Plaintiff also worked at
26 Tarzana store as the Assistant Manager and was classified as a non-exempt hourly employee
27 there. While at that store and even at the Maywood store, the non-exempt hourly employees
28

1 would clock out for lunch and continue working through lunch and would not be paid for all
2 hours worked, including the minimum wage. In addition, the non-exempt hourly employees
3 would have to clock out at the end of their shifts and continue working per the Store Manager's
4 orders because the store manager would get in trouble if their employees worked overtime.

5 13. Plaintiff was not paid on an hourly basis, but should have been for all her hours worked,
6 including the "off the clock" hours as described above. Furthermore, Ms. Robles and others
7 were not properly compensated for their commission payments, including the fact that Plaintiff
8 did not receive her \$5000 worth of commission for October 2019. In fact, Plaintiff and others
9 were not even paid their commissions on a timely basis, having to wait 3 months for commission
10 payments.

11 14. IMOBILE violated Labor Code §510 because it failed to pay Plaintiff and other similarly
12 situated aggrieved employees, including both exempt and non-exempt employees, overtime,
13 even though they worked more than 8 hours per day and/or 40 hours per week throughout their
14 employment. This is so because Plaintiff (as a store manager) and other similarly situated
15 aggrieved employees were misclassified as exempt, salaried employees and were not paid any
16 overtime compensation whatsoever. Even the employees classified as non-exempt were not paid
17 the correct amount of overtime for all hours worked because their commissions or other such
18 bonuses were not factored into their regular rate of pay for purposes of deciphering the overtime
19 rate of pay. Furthermore, hourly, non-exempt employees were not paid the correct amount of
20 overtime based on their hours worked. As such, it was not company policy to pay Plaintiff and
21 other similarly situated aggrieved employees overtime compensation, either at all or at the
22 correct amounts.

23 15. IMOBILE violated Labor Code §§ 512 and 226.7 and the applicable Industrial Welfare
24 Commission Wage Order no. 7 because it failed to provide Plaintiff s and other similarly situated
25 aggrieved employees the requisite 30-minute, uninterrupted meal periods for every five (5) hours
26 of work throughout their employment, and Plaintiff did not validly waive said meal periods.
27 IMOBILE did not completely relieve Plaintiff of all duty during said meal periods. IMOBILE
28

1 did not pay to Plaintiff one additional hour of pay at Plaintiff's regular rate of compensation for
2 each workday that one or more statutory meal periods was not provided. Meal breaks were not
3 permitted, enforced, and/or authorized by IMOBILE and were not part of the company culture,
4 especially since Plaintiff and others were misclassified as exempt employees. For the employees
5 who were actually classified as hourly, non-exempt employees (including Plaintiff as the
6 assistant manager at the Tarzana store) they were often times not able to take their meal breaks
7 before the 5th hour worked due to being understaffed (and the requirement to have at least 2
8 people on the floor at all times) and did not receive a second meal period when they worked over
9 a 10-hour shift. As such, the culture and environment at IMOBILE did not lend itself to the
10 employees receiving timely statutory meal breaks wherein they were relieved of all duty. As
11 alluded to above, the non-exempt hourly employees would have to clock out and continue
12 working through their meal break and after their shifts ended.

13 16. IMOBILE violated Labor Code § 226.7 and the applicable Industrial Welfare
14 Commission Wage Order no. 7 because it failed to provide Plaintiff and other similarly situated
15 aggrieved employees 10-minute rest periods for every four hours of work, or majority portion
16 thereof, throughout their employment. IMOBILE did not completely relieve Plaintiff of all duty
17 during said rest periods. IMOBILE did not pay to Plaintiff one additional hour of pay at
18 Plaintiff's regular rate of compensation for each workday that one or more statutory rest periods
19 was not provided. Like for meal periods, rest breaks were not part of the company policy or
20 culture, especially since Plaintiff (as store manager) and others were misclassified as exempt
21 employees. Moreover, the employees who were classified as non-exempt, hourly employees
22 (including Plaintiff as the Assistant Store Manager) were not able to take their statutory rest
23 breaks wherein they were relieved of all duty due to consistent understaffing and the requirement
24 that there be two employees on the sales floor at all times. As such, the culture and environment
25 at IMOBILE did not lend itself to the employees receiving timely statutory rest breaks.

26 17. Furthermore, during the relevant time period, IMOBILE failed to pay Plaintiff and other
27 similarly situated aggrieved employees all wages due to them within any time period specified
28

1 by California Labor Code section 204. IMOBILE was also in violation of California Labor Code
2 section 226(a), by failing to include pertinent information on the wage statements, including but
3 not limited to, the correct legal name and address of the employing entity, all hours worked
4 (overtime and minimum wages for all hours worked, including “off the clock” hours), all
5 applicable hourly rates in effect during the pay period, gross wages earned, all deductions, net
6 wages earned, premium pay for missed meal and rest breaks, and business expense
7 reimbursement, among other items. As such, IMOBILE did not provide Plaintiff and other
8 similarly situated aggrieved employees with complete, accurate itemized wage statements.

9 18. IMOBILE violated Labor Code § 203 because it willfully failed to pay Plaintiff and
10 other similarly situated aggrieved employees earned and due wages upon separation of
11 employment, either immediately upon involuntary termination, or within 72 hours of resignation.
12 After Plaintiff’s employment at IMOBILE ended, IMOBILE failed and refused to pay all wages
13 earned and due immediately upon separation. These earned but unpaid wages include the unpaid
14 minimum wages, overtime wages, meal/rest period compensation described above, and business
15 expense reimbursement.

16 19. During the relevant time period, IMOBILE also failed to keep accurate and complete
17 payroll records showing the actual hours worked per day and the wages paid to Plaintiff and
18 other aggrieved employees pursuant to California Labor Code sections 1174(d).

19 20. During the relevant time period, Plaintiff and other aggrieved employees incurred
20 necessary, business-related expenses and costs that were not reimbursed by IMOBILE. These
21 costs include, but are not limited to, use of personal phones for business-related purposes and
22 gas/mileage for work related tasks that were completed in Plaintiff’s personal vehicle, such as
23 picking up phones from locations such as Northridge, Tarzana, Montebello, and Glendale to
24 name a few. In terms of the use of the personal cell phone, the hourly employees had to
25 download an application called “Group Me” on their personal cell phones. Moreover, Plaintiff
26 and other exempt employees were required to download the “IMobile App” on their phones as
27 well as the “ADP App” and “Group Me”. Accordingly, IMOBILE was in violation of
28 California Labor Code sections 2800 and 2802.

1 **FIRST CAUSE OF ACTION**

2 **PRIVATE ATTORNEYS GENERAL ACT**

3 **(Representative Claim for PAGA penalties under California Labor Code sections 201,**
4 **202, 203, 204 and/or 204b, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1197,**
5 **1198, 2802)**

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

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

9 22. Pursuant to law, Plaintiff provided the required written notice to the LWDA and
10 Defendants of the specific violations of the California Labor Code that Defendants and DOE
11 defendants have violated and continue to violate.

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

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

18 25. Pursuant to California Labor Code section 2699, any provisions of the Labor Code that
19 provides for a civil penalty to be assessed and collected by the LWDA or any of its
20 departments, divisions, commissions, boards, agencies, or employees for violation of the code
21 may, as an alternative, be recovered through a civil action brought by an aggrieved employee
22 on behalf of himself or herself and other current or former employees pursuant to the
23 procedures specified in California Labor Code section 2699.3.

24 26. Plaintiff is an "aggrieved employee" because Plaintiff was employed by the alleged
25 violators and had one or more of the alleged violations committed against her as both a non-
26 exempt, hourly employee and as a salaried, exempt employee, and therefore is properly suited
27 to represent the interests of other current and former employees, which include all hourly, non-
28

1 exempt employees as well as all exempt, salaried employees who worked for IMOBILE in the
2 State of California during the applicable PAGA period.

3 27. Based on the acts alleged above, Plaintiff, on behalf of herself and others, seeks
4 penalties under California Labor Code sections 2698 and 2699 because of Defendants'
5 violations of numerous provisions of the California Labor Code as alleged in this Complaint.

6 28. Plaintiff therefore has exhausted all administrative remedies required of her under
7 California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this
8 cause of action and pursue penalties in a representative action for Defendants' violations of the
9 Labor Code.

10 29. California Labor Code section 2699 et seq. imposes penalties upon culpable
11 Defendants for violating the Labor Code.

12 30. California Labor Code section 558 establishes a civil penalty as follows: Any
13 employer or other person action on behalf of an employer who violates, or causes to be
14 violated, a section of this chapter or any provision regulating hours and days of work in any
15 order of the Industrial Welfare Commission (including the "Hours and Days of Work" section
16 of the Wage Order) shall be subject to a civil penalty of (1) for any initial violation, fifty
17 dollars (\$50) for each underpaid employee for each pay period for which the employee was
18 underpaid... (2) for each subsequent violation, one hundred dollars (\$100) for each underpaid
19 employee for each pay period for which the employee was underpaid...

20 31. Plaintiff seeks penalties for Defendants' misconduct as alleged herein as permitted by
21 law, but only those penalties that are required to be shared with the LWDA as Plaintiff is not
22 seeking individual/victim specific relief or underpaid wages.

23 32. Specifically, Plaintiff seeks penalties under California Labor Code section 2699, for
24 the following:

25 Violations of California Labor Code Representative Claim for PAGA penalties under
26 California Labor Code sections 201, 202, 203, 204 and/or 204b, 210, 226, 226.3, 226.7,
27 510, 512, 558, 1174, 1174.5, 1194, 1197, 1198, 2802 via 2698 and 2699 and any other
28

1 Labor Codes or Industrial Welfare Commission Wage Order(s) (no. 7) violated based on
2 the facts alleged in this Complaint.

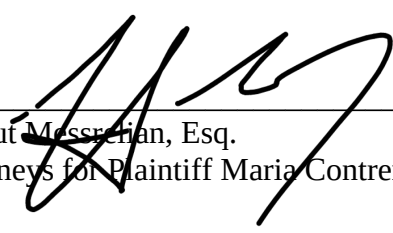
3 33. Pursuant to Labor Code section 2698 et seq., Plaintiff seeks to recover attorney's fees,
4 costs and civil penalties on behalf of Plaintiff and other current and former aggrieved
5 employees as alleged herein in an amount to be shown according to proof at trial and within the
6 jurisdictional limits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

7 WHEREFORE, Plaintiff prays for Judgment against Defendants and each of them, as
8 follows:

- 9 1. For the imposition of civil penalties;
- 10 2. For maximum civil penalties available under Labor Code Section 2699
11 against Defendants in a manner and amount authorized by that statute, as described
12 more particularly in the Complaint and representative PAGA claims;
- 13 3. For all costs and disbursements incurred in this suit;
- 14 4. Reasonable attorney's fees where available by law, including but not limited to,
15 pursuant to Labor Code section 2698 et seq., and/or other applicable laws; and
16 5. For such other and further relief as this Court may deem proper.
- 17

18 **DATED:** November 18, 2020

MESSRELIAN LAW INC.

19
20 By 
21 Harout Messrelhian, Esq.
22 Attorneys for Plaintiff Maria Contreras Robles
23
24
25
26
27
28