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County of Los Angeles

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on behalf of himself and in his representative
capacity as private attorney general

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

MARIO HERRERA, on behalf of himself and
in his representative capacity as private attorney
general,

Plaintiff,

vs.

T-MOBILE USA, INC., a Delaware
Corporation; and DOES 1-50, inclusive,

Defendants.

Case No. **20STCV22296**

Assigned For All Purposes to:

COMPLAINT FOR:

- 1) Civil Penalties Under the Private
Attorneys' General Act, Labor Code
Section 2698 *et seq.*

JURY TRIAL DEMANDED

1
2 Plaintiff MARIO HERRERA (“Plaintiff”), individually and on behalf of the general
3 public as private attorneys general, hereby asserts representative claims against defendants
4 T-MOBILE USA, INC., a Delaware Corporation (“T-Mobile”) and DOES 1-50, inclusive
5 (collectively “Defendants”) in this complaint as follows:

6 **INTRODUCTION**

7 1. This is a representative action for recovery of penalties under the Private
8 Attorneys General Act of 2004 (“PAGA”), Cal. Lab. Code sections 2698 *et seq.* PAGA permits
9 “aggrieved employees” to bring a lawsuit as a representative action on behalf of themselves and
10 all other current and former employees, to recover civil penalties and address an employer’s
11 violations of the California Labor Code.

12 2. Plaintiff brings this action pursuant to the PAGA on a representative basis. Any
13 and all persons who are or were employed as non-exempt employees, however titled, in
14 Defendants’ retail locations (the “Aggrieved Non-Exempt Employees”) during the liability
15 period are aggrieved employees.

16 3. Plaintiff brings this suit on behalf of himself and the Aggrieved Non-Exempt
17 Employees during the relevant time period to recover civil penalties and address the employer’s
18 violations of the California Labor Code and the IWC Wage Order 7-2001.

19 4. In this case, Defendants violated various provisions of the California Labor Code
20 and relevant IWC Wage Orders. As set forth below, Defendants implemented policies and
21 practices which led to Defendants’ (1) failure to accurately calculate and pay all wages owed,
22 including minimum wages and overtime wages; (2) failure to provide meal periods; (3) failure to
23 pay meal period premiums for meal periods that were not lawfully provided; (4) failure to
24 authorize and permit rest periods; (5) failure to pay rest period premiums for rest periods that
25 were not lawfully authorized and permitted; (6) failure to timely pay all owed wages at the time
26 of separation from employment; (7) failure to furnish accurate, itemized wage statements; and (8)
27 failure to indemnify employees for necessary expenses.

28 5. Plaintiff in his representative capacity seeks civil penalties on behalf of himself

1 and other aggrieved employees pursuant to PAGA for Defendants failure to comply with
2 California Labor Code and IWC Wage Order requirements.

3 6. As set forth in greater detail herein, Defendants engaged in conduct and adopted
4 policies that were and continue to be in violation of the California Labor Code and applicable
5 law. Plaintiff, on behalf of himself and all other Aggrieved Non-Exempt Employees, bring this
6 PAGA action and seek penalties for violations of the California Labor Code, including without
7 limitation sections 201, 202, 203, 204, 218.5, 218.6, 221-224, 226, 226.3, 226.7, 510, 512, 516,
8 558, 1174, 1194, 1194.2, 1195, 1197, 1198, and 2802.

9 7. This action is timely because Plaintiff suffered from a violation or numerous
10 violations of the California Labor Code within one year of the date on which a PAGA notice was
11 sent to the LWDA via online submission. More than 65 days have passed and no response has
12 been received by the LWDA. A copy of the letter sent to the LWDA with enclosure is attached
13 hereto as **Exhibit A**, thereby satisfying the notice requirement under the statute and permitting
14 Plaintiff to proceed with this action in a representative capacity.

15 **JURISDICTION AND VENUE**

16 8. The California Superior Court has jurisdiction over this action pursuant to
17 California Constitution Article VI, Section 10, which grants the Superior Court "original
18 jurisdiction in all cases except those given by statute to other trial courts." The statutes under
19 which this action is brought do not give jurisdiction to any other court.

20 9. This Court has jurisdiction over Plaintiff's claims for civil penalties under PAGA.

21 10. This Court has jurisdiction over the Defendants because each Defendant is a
22 person having sufficient minimum contacts with the State of California so as to render the
23 exercise of jurisdiction over the Defendant by the California courts consistent with traditional
24 notions of fair play and substantial justice.

25 11. Defendant has done and is doing business throughout the State of California, as it
26 maintains retail locations throughout the state, including without limitation in the County of Los
27 Angeles where Plaintiff worked. Defendant is within the jurisdiction of this Court for service of
28 process purposes. The unlawful acts alleged herein have a direct effect on Plaintiff and those

1 similarly situated within the State of California and within Los Angeles County. Defendant
2 employs or has employed Plaintiff and numerous aggrieved employees in Los Angeles County.

3 12. The California Superior Court also has jurisdiction in this matter because the civil
4 penalties sought are presently believed to be under the seventy-five thousand dollar (\$75,000.00)
5 jurisdictional threshold for Federal Court diversity jurisdiction and the aggregate potential
6 damages and recovery by all of the claims of the aggrieved employees placed in controversy by
7 Plaintiff's claims, is presently believed to be under the five million dollar (\$5,000,000.00)
8 threshold of the Class Action Fairness Act of 2005. Further, there is no federal question at issue,
9 as the issues herein are based solely on California statutes and law, including the Labor Code,
10 IWC Wage Orders, the California Code of Civil Procedure, and the California Civil Code.

11 13. Venue is proper in the Superior Court of Los Angeles County pursuant to Code of
12 Civil Procedure section 395.5 because one or more of the violations alleged in this Complaint
13 arise in that county. Venue as to Defendant is also proper in this judicial district pursuant to Code
14 of Civil Procedure section 395.

15 14. Venue is proper in this Court because upon information and belief, one or more of
16 the Defendants transact business, or have offices in this County and the acts or omissions alleged
17 herein took place in this County.

18 **PARTIES**

19 15. Plaintiff Mario Herrera is an individual who, at all times relevant herein, resided
20 in or near the County of Los Angeles, State of California. Plaintiff brings this action on behalf of
21 himself and other past and present employees similarly situated. He was employed by
22 Defendants performing inventory, sales, and customer service functions from August 2016
23 through April 2019.

24 16. Plaintiff worked as a non-exempt employee for Defendants at their retail location
25 in Santa Monica, California performing inventory, sales, and customer service functions. This
26 action is timely because Plaintiff suffered from a violation or numerous violations of the
27 California Labor Code within one year of the date on which his PAGA notice was sent to the
28 LWDA.

1 17. Upon information and belief, Defendant, T-Mobile USA, Inc., is a Delaware
2 corporation in good standing and authorized to do business in California. T-Mobile USA, Inc.'s
3 headquarters are located at 12920 SE 38th St., Bellevue, WA 98006.

4 18. T-Mobile USA, Inc. operates throughout the United States with multiple locations
5 in California. T-Mobile USA, Inc. provides wireless voice and data services.

6 19. Whenever in this complaint reference is made to any act, deed, or conduct of
7 Defendants, the allegation means that Defendants engaged in the act, deed, or conduct by or
8 through one or more of T-Mobile USA, Inc.'s officers, directors, agents, employees, or
9 representatives, who was actively engaged in the management, direction, control, or transaction
10 of the ordinary business and affairs of Defendants.

11 20. Whenever in this complaint reference is made to any act, deed, or conduct of
12 Defendants, the allegation means that Defendants engaged in the act, deed, or conduct by or
13 through one or more of Defendants' officers, directors, agents, employees, or representatives,
14 who was actively engaged in the management, direction, control, or transaction of the ordinary
15 business and affairs of Defendants.

16 21. The true names and capacities of Defendants, whether individual, corporate,
17 associate, or otherwise, sued herein as DOES 1 through 50, inclusive, are currently unknown to
18 Plaintiff, who therefore sue Defendants by such fictitious names under Code of Civil Procedure §
19 474. Plaintiffs will seek leave of court to amend this Complaint to reflect the true names and
20 capacities of the Defendants designated hereinafter as DOES when such identities become
21 known.

22 **FACTUAL ALLEGATIONS**

23 22. During the relevant time frame, Defendants compensated Plaintiff and the
24 Aggrieved Non-Exempt Employees based upon an hourly wage.

25 23. Plaintiff and the Aggrieved Non-Exempt Employees were, and at all times
26 pertinent hereto, have been non-exempt employees within the meaning of the California Labor
27 Code, and the implementing rules and regulations of the IWC California Wage Orders. They are
28 subject to the protections of the IWC Wage Orders and the Labor Code.

1 24. Plaintiff was employed as an hourly, non-exempt retail employee by Defendants
2 from August 2015 through April 2019. Plaintiff performed inventory, sales, and customer
3 service functions for Defendants at their retail locations in Hollywood, CA, Los Angeles, CA,
4 Brentwood, CA, and Santa Monica, California.

5 25. The members of the aggrieved group were non-exempt, hourly retail employees of
6 Defendants throughout the state of California during the liability period.

7 26. Plaintiff typically worked five days a week, averaging 30 hours a week.

8 27. Plaintiff is informed and believes, and thereon alleges, that Defendants are and
9 were advised by skilled lawyers and other professionals, employees, and advisors with
10 knowledge of the requirements of California's wage and employment laws.

11 28. All Aggrieved Non-Exempt Employees, including Plaintiff, are similarly situated
12 in that they are all subject to Defendants' uniform policies and systemic practices as specified
13 herein.

14 29. Plaintiff and the Aggrieved Non-Exempt Employees were not properly
15 compensated for all hours worked, in part because they were frequently required to work off the
16 clock. By way of example only, Plaintiff and, upon information and belief the Aggrieved Non-
17 Exempt Employees, were frequently required to assist customers after clocking out at the end of
18 their shifts. Prior to 2017, Plaintiff and, upon information and belief the Aggrieved Non-Exempt
19 Employees were required to attend district management meetings but could not be clocked in
20 because it would count against store variance.

21 30. In addition, the Aggrieved Non-Exempt Employees frequently worked in excess
22 of eight (8) hours a day and/or over forty (40) hours in a workweek, but were not properly paid
23 for such time at a rate of time and one-half the employee's regular rate of pay per hour.

24 31. Aggrieved Non-Exempt Employees were also often required to work shifts in
25 excess of five hours without being provided a lawful meal period and over ten hours in a day
26 without being provided a second lawful meal period as required by law.

27 32. Indeed, during the relevant time, as a consequence of Defendants' staffing and
28 scheduling practices, lack of coverage, work demands, and Defendants' policies and practices,

1 Defendants frequently failed to provide Plaintiff and the Aggrieved Non-Exempt Employees
2 timely, legally complaint uninterrupted 30-minute meal periods on shifts over five hours as
3 required by law.

4 33. On information and belief, Plaintiff and Aggrieved Non-Exempt Employees did
5 not waive their rights to meal periods under the law.

6 34. Plaintiff and the Aggrieved Non-Exempt Employees were not provided with valid
7 lawful on-duty meal periods.

8 35. Despite the above-mentioned meal period violations, Defendants often failed to
9 compensate Plaintiff, and on information and belief, often failed to compensate Aggrieved Non-
10 Exempt Employees, one additional hour of pay at their regular rate as required by California law
11 when meal periods were not timely or lawfully provided in a compliant manner.

12 36. Plaintiff is informed and believes, and thereon alleges, that Defendants know,
13 should know, knew, and/or should have known that Plaintiff and the other Aggrieved Non-
14 Exempt Employees were entitled to receive premium wages based on their regular rate of pay
15 under Labor Code §226.7 but were not receiving such compensation.

16 37. In addition, during the relevant time frame, Plaintiff and the Aggrieved Non-
17 Exempt Employees were systematically not authorized and permitted to take one net ten-minute
18 paid, rest period for every four hours worked or major fraction thereof, which is a violation of the
19 Labor Code and IWC wage order.

20 38. Defendants maintained and enforced scheduling practices, policies, and imposed
21 work demands that frequently required Plaintiff and Aggrieved Non-Exempt Employees to
22 forego their lawful, paid rest periods of a net ten minutes for every four hours worked or major
23 fraction thereof. Such requisite rest periods were not timely authorized and permitted.

24 39. In addition, Aggrieved Non-Exempt Employees were often not allowed to leave
25 the premises during rest breaks.

26 40. In fact, Defendants' employee handbook contemplates that "Employees may be
27 required to remain at the work site during Rest Periods." Such an exercise of control over
28 Aggrieved Non-Exempt Employees during rest periods is inconsistent with the employer's

obligations under the Labor Code and the mandates of *Augustus v. ABM Sec. Servs., Inc.*, 2 Cal. 5th 257 (2016).

41. Moreover, Plaintiff and the Aggrieved Non-Exempt Employees were required to incur necessary expenses in the discharge of their duties, including without limitation cellular phone expenses, but were not reimbursed for such necessary expenses. Aggrieved Non-Exempt Employees were required to use their cellular phones throughout the working day, including to clock in and out using an application through their phones.

42. Upon information and belief, Defendants provided a certain percentage employee discount to employees who used T-Mobile as their cellular phone provider, but did not reimburse cellular phone expenses for employees for whom T-Mobile was not their provider.

43. Despite the above-mentioned rest period violations, Defendants did not compensate Plaintiff, and on information and belief, did not pay Aggrieved Non-Exempt Employees one additional hour of pay at their regular rate as required by California law, including Labor Code section 226.7 and the applicable IWC wage order, for each day on which lawful rest periods were not authorized and permitted.

44. Defendants also failed to provide accurate, lawful itemized wage statements to Plaintiff and the Aggrieved Non-Exempt Employees in part because of the above specified violations. In addition, upon information and belief, Defendants omitted an accurate itemization of all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee from Plaintiff and the Aggrieved Non-Exempt Employees' wage statements.

45. Defendants have also made it difficult to determine applicable rates of pay and account with precision for the unlawfully withheld wages and deductions due to be paid to Non-exempt Employees, including Plaintiff, during the liability period because they did not implement and preserve a lawful record-keeping method to record all hours worked, meal periods, and non-provided rest and meal periods owed to employees as required for non-exempt employees by 29 U.S.C. section 211(c), California Labor Code section 226, and applicable California Wage Orders.

46. Plaintiff is informed and believes, and thereon alleges, that at all times herein mentioned, Defendants knew that at the time of termination of employment (or within 72 hours thereof for resignations without prior notice as the case may be) they had a duty to accurately compensate Plaintiffs and Aggrieved Non-Exempt Employees for all wages owed including minimum wages, commissions, overtime, meal and rest period premiums, and that Defendants had the financial ability to pay such compensation, but willfully, knowingly, recklessly, and/or intentionally failed to do so in part because of the above-specified violations.

47. In addition, Defendants failed to provide suitable seats to working employees when the nature of the work reasonably permitted the use of such seats. For example, Defendants failed to provide aggrieved employees to use during downtime or while working at the cash registers.

48. Plaintiff is informed and believes that Defendants' violation of the Labor Code and the IWC wage orders as specified herein was willful and deliberate.

49. Plaintiff and the Aggrieved Non-Exempt Employees are covered by applicable California IWC Wage Orders and corresponding applicable provisions of the California Code of Regulations, Title 8, section 11000 *et seq.*

Failure to Pay Minimum Wages

50. Labor Code § 1182.12 sets the minimum wage.

51. Labor Code §1194 provides that “Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage compensation or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.”

52. Labor Code § 1197 states that “The minimum wage for employees fixed by the commission or by any applicable state or local law, is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful.”

53. Labor Code § 1198 provides: “The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the

1 standard conditions of labor for employees. The employment of any employee for longer hours
2 than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

3 54. IWC Wage Order 7-2001 similarly requires that employees be paid on the
4 established payday for the period involved, not less than the applicable minimum wage for all
5 hours worked in the payroll period, whether the remuneration is measured by time, piece,
6 commission, or otherwise.

7 55. The IWC Wage Orders define “hours worked” as “the time during which an
8 employee is subject to the control of an employer, and includes all the time the employee is
9 suffered or permitted to work, whether or not required to do so.”

10 56. At all times relevant, Plaintiff and Aggrieved Employees consistently worked
11 hours for which they were not paid because Plaintiff and the Aggrieved Non-Exempt Employees
12 were required to work off the clock.

13 57. Plaintiff is informed and believes that Defendants and its managers were aware
14 that Plaintiff and the Aggrieved Employees were working off the clock and that they should have
15 been paid for this time.

16 58. Upon information and belief, Defendants knew or should have known Plaintiffs
17 and the Aggrieved Non-Exempt Employees were undercompensated.

18 59. Plaintiff and the Aggrieved Non-Exempt Employees were not exempt from the
19 requirement to be paid minimum wages in accordance with the law.

20 60. Plaintiff alleges that Defendants violated Labor Code sections 1194, 1197, 1198
21 and the IWC Wage Order 7-2001 by failing to pay all wages owed including minimum wages to
22 Aggrieved Non-Exempt Employees.

23 61. As a result of Defendants’ conduct in not paying Plaintiff and the Aggrieved Non-
24 Exempt Employees all wages earned, the Plaintiff and the Aggrieved Non-Exempt Employees
25 have been deprived of minimum wages for off the clock hours for which they were not
26 compensated.

27 **Failure to Pay Overtime**

28 62. As set forth above, the Labor Code and the Wage Order 7-2001 require that

1 employers pay employees at least minimum wage for every hour worked, and overtime for hours
2 worked over eight hours in a day and over forty hours in a week.

3 63. At all times relevant, pursuant to Labor Code section 510, 1194, and the IWC
4 wage order 7-2001, non-exempt employees working for more than eight (8) hours in a day or
5 forty (40) hours in a work week were entitled to overtime compensation at the rate of one and
6 one-half times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or
7 forty (40) hours in a work week. An employee who works more than twelve (12) hours in a day
8 or in excess of eight (8) hours in a day on the seventh day of work in a particular work week is
9 entitled to overtime compensation at a rate of twice the regular rate of pay.

10 64. California law requires that in determining the regular rate of pay for purposes of
11 calculating the proper overtime premium pay, the employer must consider not only straight
12 hourly wage compensation but must also include payment of all remuneration earned during the
13 applicable time period.

14 65. At times, Plaintiff and the Aggrieved Non-Exempt Employees received additional
15 remuneration, including commissions, non-discretionary bonuses and/or incentive pay during pay
16 periods in which they had worked over eight hours in a day or over forty hours in a week.
17 Defendants failed to account for the additional remuneration when calculating Plaintiff's and the
18 Aggrieved Non-Exempt Employees' overtime rate of pay. This policy, practice, and/or procedure
19 resulted in Defendants paying its hourly non-exempt employees less overtime than they should
20 have received.

21 66. Upon information and belief, Defendants knew or should have known Plaintiffs
22 and the Aggrieved Employees were undercompensated.

23 67. Defendants' failure to pay Plaintiff and the Aggrieved Employees the unpaid
24 balance of wages owed violates the provisions of Labor Code §510, §1194, §1197, §1198, and
25 Wage Order 7-2001 and is therefore unlawful.

26 68. Plaintiff, and the Aggrieved Non-Exempt Employees were not exempt from the
27 requirement to be paid overtime wages in accordance with the law.

28 69. Plaintiff alleges that Defendants violated Labor Code sections 510, 1194, 1197,

1 1198 and the IWC Wage Order by failing to pay all wages owed including overtime to Aggrieved
2 Non-Exempt Employees.

3 **Failure to Provide Timely, Legally Compliant Meal Periods**

4 70. This action is brought under Labor Code §§226.7 and 512 and Section 11(A) of
5 Wage Order 7, which provides that employers must provide employees who work more than five
6 (5) hours per day with a thirty (30) minute meal period wherein the employee is relieved of all
7 duties. The meal period may be waived by mutual consent of the employer and employee on a
8 shift which will end in less than six hours.

9 71. This action is further brought under Labor Code §226.7(b) and Section 11(B) of
10 Wage Order 7, which provides that if an employer fails to provide an employee with a thirty (30)
11 minute meal period, the employer shall pay the employee one hour of pay for each work day that
12 a thirty (30) minute meal period was missed.

13 72. During the relevant time frame, Defendant failed to provide Plaintiff and the
14 aggrieved employees with thirty (30) minute uninterrupted meal periods as required by law
15 during their employment with Defendants.

16 73. Pursuant to Labor Code § 512, no employer shall employ an employee for a work
17 period of more than five (5) hours without providing a meal break of not less than thirty (30)
18 minutes in which the employee is relieved of all of his or her duties, except that when a work
19 period of not more than six (6) hours will complete the day's work the meal period may be
20 waived by mutual consent of the employer and employee.

21 74. Similarly, pursuant to Labor Code § 512, no employer shall employ an employee
22 for a work period of more than ten (10) hours without providing a second meal break of not less
23 than thirty (30) minutes in which the employee is relieved of all of his or her duties. A second
24 meal break may only be waived by mutual consent, and if the employee did not waive his or her
25 first meal period, and the employee's work day will not exceed twelve hours.

26 75. For the relevant time period, Defendants failed to provide Plaintiff and the
27 Aggrieved Non-Exempt Employees timely and uninterrupted first meal periods of not less than
28 thirty (30) minutes within the first five hours of a shift.

1 76. For the relevant time period, Defendants also failed to provide Plaintiff and the
2 Aggrieved Non-Exempt Employees timely and uninterrupted second meal periods of not less
3 than thirty (30) minutes on shifts longer than ten hours.

4 77. Indeed, during the relevant time, as a consequence of Defendants' staffing and
5 scheduling practices, lack of coverage, work demands, and Defendants' policies and practices,
6 Plaintiff and the Aggrieved Non-Exempt Employees were not provided with legally required
7 meal periods.

8 78. On information and belief, Plaintiff and Aggrieved Non-Exempt Employees did
9 not waive their rights to meal periods under the law.

10 79. Plaintiff and the Aggrieved Non-Exempt Employees were not provided with valid
11 lawful on-duty meal periods.

12 80. As a further and independent violation of Labor Code section 226.7 and the IWC
13 Wage Order, Plaintiff and the Aggrieved Non-Exempt Employees were not paid one hour of pay
14 at their regular rate for each day that a first or second meal period was not lawfully provided.

15 **Failure to Authorize and Permit Legally Compliant Rest Breaks**

16 81. This action is brought under Labor Code §226.7 and Section 12(A) of Wage
17 Order 7, which provides that employers shall authorize and permit employees to take a rest
18 period of ten (10) minutes for each four (4) hours, or major fraction thereof, worked.

19 82. This action is further brought under Labor Code §226.7(b) and Section 12(B) of
20 Wage Order 7, which provides that if an employer fails to provide an employee with a rest
21 period, the employer shall pay the employee one hour of pay for each work day that a rest period
22 was missed.

23 83. Despite said requirements of the IWC wage orders applicable to Plaintiff's and the
24 Aggrieved Non-Exempt Employees' employment with Defendants, Defendants failed and
25 refused to authorize and permit Plaintiff and the Aggrieved Non-Exempt Employees to take
26 lawful, net ten (10) minute rest periods for every four (4) hours worked, or major fraction
27 thereof.

28 84. In addition, Plaintiff and the Aggrieved Non-Exempt Employees were not allowed

1 to leave the premises during certain rest periods and were not free from employer control during
2 certain purported rest periods.

3 85. As a further and independent violation of the law, Defendants did not pay Plaintiff
4 one additional hour of pay at his regular rate of pay for each day that a rest period violation
5 occurred. On information and belief, the other members of the aggrieved group endured similar
6 violations as a result of Defendants' rest period policies and practices and Defendant did not pay
7 said Aggrieved Non-Exempt Employees premium pay as required by law.

8 86. Despite the above-mentioned rest period violations, Defendants did not
9 compensated Plaintiff, and on information and belief, did not compensate all other aggrieved
10 employees one additional hour of pay at their regular rate as required by California law for each
11 day on which rest periods were not authorized and permitted.

12 87. By their failure to authorize and permit Plaintiff and the aggrieved employees to
13 take a lawful, net ten (10) minute rest period free from work duties every four (4) hours or major
14 fraction thereof worked, including failure to provide two (2) total rest periods on six to ten hour
15 shifts and three (3) total ten (10) minute rest periods on days on which Plaintiff and the other
16 Aggrieved Non-Exempt Employees work(ed) work a third rest period for shifts in excess of ten
17 (10) hours, and by their failure to provide compensation for such unprovided rest periods as
18 alleged herein, Defendants willfully violated the provisions of Labor Code sections 226.7 and the
19 applicable IWC Wage Order(s).

20 **Failure to Provide Accurate Compliant Wage Statements**

21 88. This action is brought under Labor Code §226, which sets for reporting
22 requirements for employers when paying wages.

23 89. Labor Code section 226(a) reads in pertinent part: "Every employer shall,
24 semimonthly or at the time of each payment of wages, furnish each of his or her employees,
25 either as a detachable part of the check, draft, or voucher paying the employee's wages, or
26 separately when wages are paid by personal check or cash, an accurate itemized statement in
27 writing showing (1) gross wages earned, (2) total hours worked by the employee... (4) all
28 deductions... (5) net wages earned, (6) the inclusive dates of the period for which the employee

1 is paid, (7) the name of the employee and only the last four digits of his or her social security
2 number or an employee identification number other than a social security number, (8) the name
3 and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect
4 during each the pay period and the corresponding number of hours worked at each hourly rate by
5 the employee....”.

6 90. Further, IWC Wage Order 7-2001 requires in pertinent part: Every employer shall
7 keep accurate information with respect to each employee including the following: (3) Time
8 records showing when the employee begins and ends each work period. Meal periods, split shift
9 intervals, and total daily hours worked shall also be recorded...(5) Total hours worked in the
10 payroll period and applicable rates of pay....”

11 91. Labor Code section 1174 of the California also requires Defendants to maintain
12 and preserve, in a centralized location, among other items, records showing the names and
13 addresses of all employees employed and payroll records showing the hours worked daily by, and
14 the wages paid to, its employees. On information and belief and based thereon, Defendants have
15 knowingly and intentionally failed to comply with Labor Code section 1174, including by
16 implementing the policies and procedures and committing the violations alleged in the preceding
17 causes of action and herein. Defendants’ failure to comply with Labor Code section 1174 is
18 unlawful pursuant to Labor Code section 1175.

19 92. Defendants have failed to record many of the items delineated in applicable
20 Industrial Wage Orders and Labor Code section 226, and required under Labor Code section
21 1174, including by virtue of the fact that each wage statement which failed to accurately
22 compensate Plaintiff and the Aggrieved Non-Exempt Employees for all hours worked and for
23 missed and non-provided meal and rest periods, or which failed to include compensation for all
24 minimum wages earned or overtime hours worked, was an inaccurate wage statement.

25 93. On information and belief, Defendants failed to implement and preserve a lawful
26 record-keeping method to record all hours worked, meal periods, and non-provided meal and rest
27 periods owed to employees, as required for Aggrieved Non-Exempt Employees under California
28 Labor Code section 226 and applicable California Wage Orders. In order to determine if they

1 had been paid the correct amount and rate for all hours worked, Plaintiff and the Aggrieved Non-
2 Exempt Employees have been, would have been, and are compelled to try to discover the
3 required information missing from their wage statements and to perform complex calculations in
4 light of the inaccuracies and incompleteness of the wage statements Defendants provided to
5 them.

6 94. As a pattern and practice, in violation of Labor Code section 226(a) and the IWC
7 Wage Orders, Defendants did not and still do not furnish each of the Aggrieved Non-Exempt
8 Employees with an accurate itemized statement in writing accurately reflecting all of the required
9 information. Specifically, Defendants have also omitted accurate itemizations of total hours
10 worked, the name and address of the legal entity that is the employer, and gross pay from
11 Plaintiff and the Aggrieved Employees' wage statements. In addition, Defendants have failed to
12 provide accurate itemized wage statements as a consequence of the above-specified violations for
13 failure to accurately pay all wages owed, accurately record all hours worked, and failure to pay
14 meal and rest period premiums as required by law.

15 95. Moreover, upon information and belief, as a pattern and practice, in violation of
16 Labor Code section 226(a) and the IWC Wage Orders, Defendants did not and do not maintain
17 accurate records pertaining to the total hours worked for Defendants by the Aggrieved Non-
18 Exempt Employees, including but not limited to, beginning and ending of each work period,
19 meal period and split shift interval, the total daily hours worked, and the total hours worked per
20 pay period and applicable rates of pay.

21 **Failure to Indemnify Employees for Necessary Expenses**

22 96. Wage Order 4-2001 and Labor Code Section 2802 require employers to reimburse
23 employees for necessary expenses. Plaintiff and the Non-Exempt Employees were required to
24 incur expenses including without limitation cellular phone expenses for their work at
25 Defendants' retail stores.

26 97. Plaintiff, and on information and belief members of the Aggrieved Non-Exempt
27 Employees, were required to incur expenses in the performance of their assigned job duties. For
28 example, Plaintiff and the Aggrieved Non-Exempt Employees were required to incur numerous

1 out of pocket expenses, including without limitation, for cellular phone usage and for a phone
2 application, in direct consequence of the discharge of their duties.

3 98. Upon information and belief, the Defendants did not reimburse Plaintiff or the
4 Aggrieved Non-Exempt Employees for such expenses. This constitutes a violation of Labor
5 Code section 2802.

6 **Failure to Pay All Wages At the Time of Termination**

7 99. In part as a result of the above specified violations, Defendants have also failed to
8 pay all wages owed at the time of separation as required by Labor Code §§ 201-202.

9 100. Labor Code §203, at all times relevant herein, provided that if an employer
10 willfully fails to pay any wages of an employee who is discharged or quits within the applicable
11 time frame, the wages of such employee shall continue as from the due date thereof at the same
12 rate until paid or until an action therefor is commenced, for not more than 30 days.

13 101. Plaintiff and the Aggrieved Non-Exempt Employees also did not receive waiting
14 time penalties as required by Labor Code § 203.

15 102. All Aggrieved Non-Exempt Employees who were separated from employment are
16 entitled to compensation for all forms of wages earned, including but not limited to unpaid
17 straight time wages, minimum wage, overtime compensation and compensation for non-provided
18 meal and rest periods, but to date have not received such compensation, therefore entitling them
19 to civil penalties under PAGA for violations of Labor Code sections 201-203.

20 **Failure to Provide Suitable Seats**

21 103. Wage Order 7-2001 states “All working employees shall be provided with suitable
22 seats when the nature of the work reasonably permits the use of seats.”

23 104. Plaintiff alleges that Defendants failed to provide suitable seats to aggrieved
24 employees working in the retail locations even though the nature of the work reasonably
25 permitted the use of such seats. For example, without limitation, Defendants failed to provide
26 aggrieved employees with suitable seats for use during downtime or while working at the
27 registers.

28 105. Defendants’ failure to provide suitable seats constitutes a violation of Labor Code

1 section 1198, and Wage Order 7-2001.

2 106. Labor Code section 1198 makes it unlawful to employ an employee under
3 conditions of labor that are prohibited by the applicable Wage Order.

4 107. By failing to provide Plaintiff and the other current and former aggrieved
5 employees with suitable seats in violation of Wage Order 7-2001, Defendants also violated Labor
6 Code section 1198.

7 108. Plaintiff is informed and believes that Defendants' violation of the Labor Code
8 and the IWC wage orders as specified herein was willful and deliberate.

9 **FIRST CAUSE OF ACTION**

10 **THE PRIVATE ATTORNEYS GENERAL ACT - LABOR CODE §§ 2698, et. seq.**

11 109. Plaintiff incorporates by reference and realleges each and every allegation
12 contained above, as though fully set forth herein.

13 110. On or about March 31, 2020, Plaintiff provided written notice by certified mail to
14 the Labor and Workforce Development Agency ("LWDA") and Defendants of the specific
15 violations of the California Labor Code that Defendants have violated and continue to violate,
16 including the facts and theories that supported each alleged violation. All fees were paid as
17 required by statute. A copy of the letter sent to the LWDA with enclosure is attached hereto as
18 **Exhibit A.**

19 111. The LWDA did not provide notice of intention to investigate Plaintiff's
20 allegations within 65 calendar days of the March 31, 2020 notice. Labor Code section
21 2699.3(a)(2)A). Thus, this action is timely.

22 112. Accordingly, Plaintiff has exhausted all administrative procedures required of
23 them under Labor Code §§2698, 2699 and 2699.3, and as a result, is justified as a matter of right
24 in bringing forward this cause of action.

25 113. Plaintiff is an aggrieved employee as defined in Labor Code Section 2699(a). He
26 bring this cause of action on his own behalf and all persons who are or were as non-exempt
27 employees, however titled, in Defendants' retail locations during the liability period.

28 114. Pursuant to Labor Code section 2698 et seq and 2699(a) Plaintiff seeks to recover

1 civil penalties for which Defendants are liable due to numerous Labor Code and Wage Order
2 violations as set forth in this Complaint.

3 115. Specifically, Plaintiff seeks penalties under Labor Code §2699, for, without
4 limitation, the following:

- 5 a. Defendants' failure to comply with the requirement of Labor Code
6 §1182.12, 1194, 1197, 1198, and Wage Order 7-2001 to pay at
7 least minimum wage for every hour worked;
- 8 b. Defendants' failure to comply with the requirement of Labor Code
9 §510, 1194, 1197, 1198, and Wage Order 7-2001 to pay all wages
10 earned including overtime wages;
- 11 c. Defendants' failure to comply with the requirement of Labor Code
12 §216 to pay wages after demand was made by Plaintiffs;
- 13 d. Defendants' failure to comply with the requirement of Labor Code
14 §§204 and 210 to pay, without condition and within the time set by
15 the applicable article, all wages earned;
- 16 e. Defendants' failure to comply with the requirement of Labor Code
17 §225.5 to pay wages due;
- 18 f. Defendants' failure to comply with the requirement of Labor Code
19 §§201 and 202 to pay wages due to former employees;
- 20 g. Defendants' failure to comply with the requirement of Labor Code
21 §203 to pay waiting time penalties to former employees for
22 violating Labor Code §§201-202.
- 23 h. Defendants' failure to comply with the requirement of Labor Code
24 §226.7, 1198, and IWC Wage Order 7-2001 to authorize and
25 permit ten (10) minute rest breaks;
- 26 i. Defendants' failure to comply with the requirement of Labor Code
27 §226.7, 1198, and IWC Wage Order 7-2001 to pay one hour of
28 premium pay for each statutorily required rest break that was not

1 authorized and permitted;

2 j. Defendants' failure to comply with the requirement of Labor Code
3 §226.7, 512, 1198, and IWC Wage Order 7-2001 to provide
4 uninterrupted 30 minute off-duty meal periods;

5 k. Defendants' failure to comply with the requirement of Labor Code
6 §226.7, 1198, and IWC Wage Order 7-2001 to pay one hour of
7 premium pay for each statutorily required meal break that was not
8 provided;

9 l. Defendants' failure to maintain required records in violation of
10 Labor Code § 226, 1174, and Wage Order 7-2001;

11 m. Defendants' failure to provide accurate compliant wage statements
12 under Labor Code § 226.

13 n. Defendants' failure to reimburse necessary expenses in violation of
14 Labor Code § 2802.

15 o. Defendants' failure to provide suitable seats to employees in
16 violation of Labor Code section 1198 and Wage Order 7-2001.

17 116. As a result of the acts alleged above, Plaintiffs seek penalties under Labor Code
18 §§2698 and 2699 because of Defendants' violation of numerous provisions of the California
19 Labor Code and IWC Wage Orders.

20 117. As a result of the acts alleged above, Plaintiff seeks penalties under Labor Code
21 §§2698 and 2699 because of Defendants' violation of numerous provisions of the California
22 Labor Code and IWC Wage Orders. Plaintiff seeks civil penalties for Defendants' violation of
23 Labor Code provisions for which a civil penalty is specifically provided, including but not
24 limited to the following:

25 a. Pursuant to Labor Code § 210, for violations of Labor Code § 204,
26 Defendants are subject to a civil penalty in the amount of one
27 hundred dollars (\$100) for the initial violation for each failure to
28 pay each employee and two hundred (\$200) per employee for

violations in subsequent pay periods.

b. Pursuant to Labor Code § 226.3, for violations of Labor Code § 226(a), Defendants are subject to a civil penalty in the amount of two hundred and fifty dollars (\$250) per aggrieved employee for the initial pay period where a violation occurs and one thousand dollars (\$1,000) per aggrieved employee for violations in subsequent pay periods.

c. Pursuant to Labor Code § 558(a), “[a]ny employer or other 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,” including Labor Code §§ 510 and 512, shall be subject to a civil penalty, in addition to any other penalty provided by law, of fifty dollars (\$50) for initial violations for each underpaid employee for each pay period for which the employee was underpaid and one hundred dollars (\$100) for each subsequent violation for each underpaid employee for each pay period for which the employee was underpaid.

d. Pursuant to Labor Code § 1174.5, for violations of Labor Code § 1174(d), Defendants are subject to a civil penalty of five hundred dollars (\$500).

e. Pursuant to Labor Code § 1197.1, an employer who pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission, shall be subject to a civil penalty as follows: for any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid; and for each subsequent violation of the same offense, two hundred fifty dollars

(§250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation was intentionally committed.

118. Under Labor Code §2699(f), Plaintiff and the Aggrieved Employees are entitled to \$100 for any initial violation and \$200 for all subsequent violations of the above-mentioned provisions of the California Labor Code for which no other civil penalty is specifically provided.

119. Under Labor Code §2699, Plaintiff and the Aggrieved Employees should be awarded twenty-five percent (25%) of all penalties due under California law, as well as interest, attorneys' fees and costs.

120. Under Labor Code §2699, the State of California should be awarded seventy-five percent (75%) of the penalties due under California law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays judgment against Defendants, as follows:

1. For penalties according to proof, pursuant to Labor Code §§ 2698 et seq. for the violations specified above;
2. For penalties under Labor Code sections 210, 226.3, 1174.5, 1197.1, and 2699(a) and (f);
3. For interest at the legal rate pursuant to Labor Code §§ 218.6, 1194, 2802, California Civil Code §§ 3287, 3288, and/or any other applicable provision providing for pre-judgment interest;
4. For reasonable attorneys' fees, expenses and costs under Labor Code §§1194, 226, 2699, and/or Code of Civil Procedure §1021.5, and/or any other applicable provisions providing for attorneys' fees and costs; and
5. For such other and further relief as the Court deems proper.

1 Dated: June 5, 2020

Respectfully submitted,

2
3 By:



JAMES HAWKINS APLC

James R. Hawkins, Esq.

Christina M. Lucio, Esq.

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6 *Attorneys for Plaintiff*

7 MARIO HERERRA on behalf of himself and his
8 representative capacity as private attorney general
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EXHIBIT A

JAMES *JH* HAWKINS

A PROFESSIONAL LAW CORPORATION

9880 RESEARCH DRIVE, SUITE 200, IRVINE, CALIFORNIA 92618
TELEPHONE (949) 387-7200; FACSIMILE (949) 387-6676

March 31, 2020

Via Online Filing (LWDA) and Certified Mail (Employer)

California Labor and Workforce Development Agency
Attn: PAGA Administrator

T-Mobile USA, Inc.
C/O Julie Nelson, Paralegal
12920 SE 38th St.
Bellevue, Washington 98006
Certified Mail Receipt: 7018 0680 0001 9386 0199

T-Mobile USA, Inc.
Agent for Service of Process:
Corporation Service Company Which Will Do Business in California as CSC- Lawyers
Incorporating Service
2710 Gateway Oaks Dr., Suite 150N
Sacramento, California 95833
Certified Mail Receipt: 7018 0680 0001 9386 0205

Re: NOTICE PURSUANT TO LABOR CODE SECTIONS 2698 *et seq.*

To Whom It May Concern:

PLEASE TAKE NOTICE that Plaintiff Mario Herrera, on behalf of himself and all others similarly situated, hereby gives NOTICE of his Complaint pursuant to Labor Code Sections 2698, *et seq.* against Defendant T-Mobile USA, Inc., a Delaware corporation, and DOES 1 through 50, inclusive. Plaintiff intends to commence an action against Defendants pursuant to Labor Code sections 2698 *et seq.* Plaintiff hereby gives written notice by online submission to the Labor and Workforce Development Agency, and by certified mail to Defendant T-Mobile USA, Inc. via its agent for service of process.

Plaintiff has attached his Complaint, and incorporates the allegations in the Complaint as though fully set forth herewith, setting out the specific provisions of the Labor Code that Plaintiff alleges have been violated, including the facts and relevant theories alleged against Defendants in the PAGA representative action complaint.

NOTICE PURSUANT TO LABOR CODE SECTIONS 2698 et seq.

March 31, 2020

Page 2

Plaintiff alleges that Defendants committed the violations specified in the Complaint against both her and the group of aggrieved employees that he seeks to represent: Any and all persons who are or were as non-exempt employees, however titled, in Defendants' retail locations (the "Aggrieved Employees") during the liability period.

In addition to the violations specified in the attached Complaint, Plaintiff alleges that Defendants failed to provide suitable seats to aggrieved employees working in the retail locations even though the nature of the work reasonably permitted the use of such seats. For example, without limitation, Defendants failed to provide aggrieved employees with suitable seats for use during downtime or while working at the registers. Defendants' failure to provide suitable seats constitutes a violation of Labor Code section 1198, and Wage Order 7-2001. Wage Order 7-2001 provides: "All working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats." Labor Code section 1198 makes it unlawful to employ an employee under conditions of labor that are prohibited by the applicable Wage Order. By failing to provide Plaintiff and the other current and former aggrieved employees with suitable seats in violation of Wage Order 7-2001, Defendants also violated Labor Code section 1198.

All Labor Code and related Complaint allegations pertain to all entities or individuals named in the Complaint, even if not so specified.

Please advise by certified mail within sixty-five (65) days of the post mark on this letter if the LWDA intends to investigate these claims. Thank you, and please contact me if you have any questions or require additional information.

Please contact me if you have any questions or require additional information.

Very Truly Yours,

/s/ Christina M. Lucio

Christina M. Lucio, Esq.

Enclosure: Class Action Complaint