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Attorneys for Plaintiff, the Class, and Aggrieved Employees

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

SAMIRA SADAT, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

HIT MOBILE, INC., a California
corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No.: 37-2020-00023612-CU-OE-CTL

**CLASS AND REPRESENTATIVE ACTION
COMPLAINT FOR:**

- (1) **VIOLATION OF LABOR CODE §§ 201-
203; AND**
(2) **VIOLATION OF LABOR CODE §§ 2698,
ET SEQ.**

DEMAND OVER \$25,000

1 Plaintiff Samira Sadat (“Plaintiff”) hereby submits this Class and Representative Action
2 Complaint (“Complaint”) against Defendant HIT Mobile, Inc. (“Defendant”), and Does 1-50
3 (collectively, “Defendants”), as an individual and on behalf of all other similarly situated current
4 and former employees of Defendants for penalties and/or damages under the California Labor
5 Code for failure to pay sick pay at the regular rate of pay, as follows:

6 **INTRODUCTION**

7 1. This Complaint is within the Court’s jurisdiction under California Labor Code
8 §§ 201-203, 246, and 2698, *et seq.*, and the California Industrial Welfare Commission’s (“IWC”)
9 Wage Orders.

10 2. This Complaint challenges systemic illegal employment practices resulting in
11 violations of the California Labor Code against employees of Defendants.

12 3. Plaintiff is informed and believes, and based thereon alleges, that Defendants
13 jointly and severally have acted intentionally and with deliberate indifference and conscious
14 disregard to the rights of all employees by failing to pay sick pay at the regular rate of pay.

15 4. Plaintiff is informed and believes and based thereon alleges that Defendants have
16 engaged in, among other things a system of willful violations of the California Labor Code and
17 applicable IWC Wage Orders by creating and maintaining policies, practices and customs that
18 knowingly deny employees the above stated rights and benefits.

19 **JURISDICTION AND VENUE**

20 5. The Court has jurisdiction over the violations of the California Labor Code
21 §§ 201-203, 246, and 2698, *et seq.*

22 6. Venue is proper in San Diego County because Defendant operates various
23 business locations in this County, and Plaintiff worked for Defendant in this County.

24 **PARTIES**

25 7. Plaintiff is a former employee of Defendant. From in or about June 2016 to on or
26 about March 2, 2020, Plaintiff worked for Defendant as a non-exempt employee. Plaintiff was
27 terminated from her employment on or about March 2, 2020.

28 8. During her employment with Defendant, Plaintiff was paid various non-

1 discretionary incentive wages, including without limitation, commission wages. During her
2 employment with Defendant, Plaintiff was also paid wages for sick time.

3 9. Plaintiff was and is the victim of the policies, practices, and customs of
4 Defendants complained of in this action in ways that have deprived her of the rights guaranteed
5 by California Labor Code §§ 201-203, 246, and 2698, *et seq.*, and the applicable IWC Wage
6 Orders.

7 10. Plaintiff is informed and believes and based thereon alleges that Defendant was
8 and is a California corporation doing business in the State of California. Defendant is in the
9 business of providing telecommunication services and retail sales in Southern California,
10 including in the County of San Diego.

11 11. Plaintiff is informed and believes and based thereon alleges that at all times herein
12 mentioned Defendant and DOES 1 through 50 are and were business entities, individuals, and
13 partnerships, licensed to do business and actually doing business in the State of California.

14 12. As such, and based upon all the facts and circumstances incident to Defendants'
15 business in California, Defendants are subject to California Labor Code §§ 201-203, 246, and
16 2698, *et seq.*, and the IWC Wage Orders.

17 13. Plaintiff does not know the true names or capacities, whether individual, partner
18 or corporate, of the Defendants sued herein as DOES 1 through 50, inclusive, and for that reason,
19 said Defendants are sued under such fictitious names, and Plaintiff prays for leave to amend this
20 Complaint when the true names and capacities are known. Plaintiff is informed and believes and
21 based thereon alleges that each of said fictitious Defendants were responsible in some way for
22 the matters alleged herein and proximately caused Plaintiff and members of the general public
23 and class to be subject to the illegal employment practices, wrongs and injuries complained of
24 herein.

25 14. At all times herein mentioned, each of said Defendants participated in the doing
26 of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
27 Defendants, and each of them, were the agents, servants and employees of each of the other
28 Defendants, as well as the agents of all Defendants, and at all times herein mentioned, were

1 acting within the course and scope of said agency and employment.

2 15. Plaintiff is informed and believes and based thereon alleges that at all times
3 material hereto, each of the Defendants named herein was the agent, employee, alter ego and/or
4 joint venturer of, or working in concert with each of the other co-defendants and was acting
5 within the course and scope of such agency, employment, joint venture, or concerted activity.
6 To the extent said acts, conduct, and omissions were perpetrated by certain Defendants, each of
7 the remaining Defendants confirmed and ratified said acts, conduct, and omissions of the acting
8 Defendants.

9 16. At all times herein mentioned, Defendants, and each of them, were members of,
10 and engaged in, a joint venture, partnership and common enterprise, and acting within the course
11 and scope of, and in pursuance of, said joint venture, partnership and common enterprise.

12 17. At all times herein mentioned, the acts and omissions of various Defendants, and
13 each of them, concurred and contributed to the various acts and omissions of each and all of the
14 other Defendants in proximately causing the injuries and damages as herein alleged. At all times
15 herein mentioned, Defendants, and each of them, ratified each and every act or omission
16 complained of herein. At all times herein mentioned, the Defendants, and each of them, aided
17 and abetted the acts and omissions of each and all of the other Defendants in proximately causing
18 the damages as herein alleged.

19 CLASS ACTION ALLEGATIONS

20 18. **Definition:** The named individual Plaintiff seeks class certification, pursuant to
21 California Code of Civil Procedure § 382, of the following Class: All non-exempt employees in
22 the State of California who were paid non-discretionary incentive remuneration, including
23 without limitation, commission wages, and sick pay, and whose employment ended (either
24 voluntarily or involuntarily) at any time from April 6, 2017, through the present (the “Class”).

25 19. Plaintiff reserves the right to propose additional classes and/or subclasses, and/or
26 amend the above class definitions upon further discovery and investigation.

27 20. **Numerosity and Ascertainability:** The members of the Class are so numerous
28 that joinder of all members would be impractical, if not impossible. The identity of the members

1 of the Class is readily ascertainable by review of Defendants' records, including payroll records.
2 Plaintiff alleges that Defendants failed to pay employees sick pay at the regular rate of pay, in
3 violation of Labor Code §§ 201-203 and 246.

4 21. **Adequacy of Representation:** The named Plaintiff is fully prepared to take all
5 necessary steps to represent fairly and adequately the interests of the Class defined above.
6 Plaintiff's attorneys are ready, willing and able to fully and adequately represent the Class and
7 named Plaintiff. Plaintiff's attorneys have prosecuted and settled wage-and-hour class actions in
8 the past and currently have a number of wage-and-hour class actions pending in California state
9 and federal courts.

10 22. Defendants uniformly administered a corporate policy and practice of failing to
11 pay employees sick pay at their regular rate of pay, in violation of Labor Code §§ 201-203 and
12 246.

13 23. **Common Question of Law and Fact:** There are predominant common questions
14 of law and fact and a community of interest amongst Plaintiff and the claims of the Class
15 concerning Defendants' policy and practice of failing to pay sick pay at the regular rate of pay, in
16 violation of Labor Code §§ 201-203 and 246.

17 24. **Typicality:** The claims of Plaintiff are typical of the claims of all members of the
18 Class in that Plaintiff has suffered the harm alleged in this Complaint in a similar and typical
19 manner as the Class Members. As with other Class Members, Plaintiff was a non-exempt
20 employee and was paid hourly. Plaintiff routinely earned non-discretionary incentive wages,
21 such as commission wages, that increased her regular rate of pay. However, whenever sick pay
22 was paid to Plaintiff, it was paid at Plaintiff's base rate of pay rather than the correct, higher
23 regular rate of pay that included any non-discretionary incentive wages. To date, Plaintiff has
24 yet to receive the underpaid wages owed to her. As such, Plaintiff is a member of the Class and
25 has suffered the alleged violations of California Labor Code §§ 201-203 and 246.

26 25. The California Labor Code and upon which Plaintiff bases these claims is broadly
27 remedial in nature. These laws and labor standards serve an important public interest in
28 establishing minimum working conditions and standards in California. These laws and labor

standards protect the average working employee from exploitation by employers who may seek to take advantage of superior economic and bargaining power in setting onerous terms and conditions of employment.

26. The nature of this action and the format of laws available to Plaintiff and members of the Class identified herein make the class action format a particularly efficient and appropriate procedure to redress the wrongs alleged herein. If each employee were required to file an individual lawsuit, the corporate Defendant would necessarily gain an unconscionable advantage since it would be able to exploit and overwhelm the limited resources of each individual Plaintiff with Defendant's vastly superior financial and legal resources. Requiring each Class member to pursue an individual remedy would also discourage the assertion of lawful claims by employees who would be disinclined to file an action against their former and/or current employer for real and justifiable fear of retaliation and permanent damage to their careers at subsequent employment.

27. The prosecution of separate actions by the individual class members, even if possible, would create a substantial risk of (a) inconsistent or varying adjudications with respect to individual Class members against Defendants and which would establish potentially incompatible standards of conduct for the Defendants, and/or (b) adjudications with respect to individual Class members which would, as a practical matter, be dispositive of the interest of the other Class members not parties to the adjudications or which would substantially impair or impede the ability of the Class members to protect their interests. Further, the claims of the individual members of the Class are not sufficiently large to warrant vigorous individual prosecution considering all of the concomitant costs and expenses.

28. Such a pattern, practice and uniform administration of corporate policy regarding illegal employee compensation described herein is unlawful and creates an entitlement to recovery by the Plaintiff and the Class identified herein, in a civil action, for all applicable penalties and/or damages, reasonable attorneys' fees, and costs of suit according to the mandate of California Labor Code §§ 218.5 and 1194, and Code of Civil Procedure § 1021.5.

29. Proof of a common business practice or factual pattern, which the named Plaintiff

1 experienced and is representative of, will establish the right of each of the members of the Class
2 to recovery on the causes of action alleged herein.

3 **FIRST CAUSE OF ACTION**

4 **VIOLATION OF LABOR CODE §§ 201-203**

5 **(BY PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS)**

6 30. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 29 as
7 though fully set forth herein.

8 31. Labor Code § 246(l)(1) provides that paid sick time for non-exempt employees be
9 “calculated in the same manner as the regular rate of pay for the workweek in which the
10 employee uses paid sick time, whether or not the employee actually works overtime in that
11 workweek.”

12 32. Labor Code § 246(l)(2) further provides that paid sick time for non-exempt
13 employees be “calculated by dividing the employee’s total wages, not including overtime
14 premium pay, by the employee’s total hours worked in the full pay periods of the prior 90 days
15 of employment.”

16 33. Defendants violated Labor Code § 246 by failing to pay sick pay at the regular
17 rate of pay. Plaintiff and Class Members routinely earned non-discretionary incentive
18 remuneration, including without limitation, commission wages, thereby increasing their regular
19 rates of pay to amounts that were higher than their base rates of pay. However, whenever sick
20 pay was paid to Plaintiff and Class Members, it was paid at their base rates of pay rather than the
21 correct, higher regular rates of pay, as required under Labor Code § 246.

22 34. As a pattern and practice, Defendants regularly failed to pay Plaintiff and Class
23 Members their correct wages and accordingly owe waiting time penalties pursuant to Labor
24 Code § 203. Further, Plaintiff is informed and believes and based thereon alleges that such
25 failure to pay sick pay at the correct regular rate was willful, such that Plaintiff and Class
26 Members whose employment has separated are entitled to waiting time penalties pursuant to
27 Labor Code §§ 201-203.

28 35. Such a pattern, practice and uniform administration of corporate policy regarding

1 illegal employee compensation as described herein is unlawful and creates an entitlement to
2 recovery by the Plaintiff and the Class identified herein, in a civil action, for the unpaid balance
3 of the full amount of damages and penalties, attorneys' fees, and costs of suit according to the
4 mandate of California Labor Code §§ 201-203, 218.5, and 1194.

5 **SECOND CAUSE OF ACTION**

6 **VIOLATION OF LABOR CODE §§ 2698, *ET SEQ.***

7 **(BY PLAINTIFF AND THE AGGRIEVED EMPLOYEES AGAINST ALL**
8 **DEFENDANTS)**

9 36. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 35 as
10 though fully set forth herein.

11 37. Plaintiff brings this cause of action as a proxy for the State of California and in
12 this capacity, seeks penalties on behalf of all Aggrieved Employees from June 5, 2019, through
13 the present, for Defendants' violations of Labor Code §§ 201-203 and 246. As alleged above,
14 Defendants, as a matter of policy and practice, failed to pay Plaintiff and other Aggrieved
15 Employees sick pay at the correct regular rate of pay, in violation of Labor Code §§ 201-203 and
16 246.

17 38. Because of Defendants' above-stated Labor Code violations, Plaintiff is an
18 "aggrieved employee" as defined in Labor Code § 2699(a). As such, Plaintiff brings this cause
19 of action on behalf of the State of California for violations committed against all similarly
20 situated Aggrieved Employees of Defendant.

21 39. On or about June 5, 2020, Plaintiff sent written notice to the California Labor &
22 Workforce Development Agency ("LWDA") of Defendants' violations of Labor Code §§ 201-
23 203 and 246, pursuant to Labor Code § 2698, *et seq.*, the Private Attorney General Act
24 ("PAGA"). As of the date of the filing of this Complaint, the LWDA has yet to provide notice to
25 Plaintiff as to whether it intends to investigate the Labor Code violations provided for in
26 Plaintiff's written notice.

27 40. In addition to the LWDA, Plaintiff also sent her written notice to Defendant via
28 certified mail, according to Labor Code § 2699.3.

41. As such, pursuant to Labor Code § 2699(a), Plaintiff seeks recovery of any and all applicable civil penalties for Defendants' violations of Labor Code §§ 201-203 and 246, for the time period described above, on behalf of herself and all other Aggrieved Employees.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment as an individual and on behalf of all others that this suit is brought against Defendants, jointly and severally, as follows:

1. For an order certifying the proposed Class;
2. For an order appointing Plaintiff as the representative of the Class as described herein;
3. For an order appointing counsel for Plaintiff as Class counsel;
4. Upon the First Cause of Action, for unpaid wages and/or penalties pursuant to California Labor Code §§ 201-203, and for costs and attorneys' fees;
5. Upon the Second Cause of Action, for the full amount of civil penalties according to the PAGA, Labor Code § 2698, *et seq.*, and for costs and attorneys' fees;
6. On all causes of action, for attorneys' fees and costs as provided by California Labor Code §§ 218.5, 1194, and 2699, and Code of Civil Procedure § 1021.5; and
7. For such other and further relief as the Court may deem just and proper.

DATED: July 8, 2020

DIVERSITY LAW GROUP, P.C.

By: _____
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