

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: William Fahey

MESSRELIAN LAW INC.

Harout Messrelian, Esq. (272020)

500 N. Central Ave., Suite 840

Glendale, California 91203

Telephone: (818) 484-6531

Facsimile: (818) 956-1983

Attorneys for Plaintiff Gerardo Murillo

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

GERARDO MURILLO,

Plaintiff,

vs.

NU CONNECT GROUP LLC; RENE
PINEDA; and DOES 1 to 25, inclusive,

Defendants.

CASE NO.: **21STCV04244**

COMPLAINT FOR DAMAGES FOR:

- 1) FAILURE TO COMPENSATE FOR ALL HOURS WORKED;**
- 2) FAILURE TO PAY MINIMUM WAGES;**
- 3) FAILURE TO PAY OVERTIME;**
- 4) FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS;**
- 5) FAILURE TO PAY WAGES WHEN EMPLOYMENT ENDS;**
- 6) FAILURE TO PAY WAGES OWED EVERY PAY PERIOD;**
- 7) VIOLATION OF LABOR CODE SECTION 558;**
- 8) FAILURE TO MAINTAIN ACCURATE RECORDS;**
- 9) FAILURE TO PROVIDE REST BREAKS;**
- 10) FAILURE TO PROVIDE MEAL BREAKS;**
- 11) PRIVATE ATTORNEYS GENERAL ACT ("PAGA")**
- 12) FAILURE TO REIMBURSE BUSINESS EXPENSES;**
- 13) VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 17200**

JURY TRIAL DEMANDED

COMES NOW Plaintiff, GERARDO MURILLO (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 NU CONNECT GROUP LLC; RENE PINEDA; and DOES 1 to 25, (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 male resident of the County of Los Angeles, State of California.

3. Plaintiff is informed and believes that at all times herein mentioned, Defendant NU CONNECT GROUP LLC (hereinafter “NU CONNECT”) is a California corporation, doing business in the County of Los Angeles, State of California, and which employed Plaintiff.

4. Plaintiff is informed and believes that at all times herein mentioned, Defendant RENE PINEDA is a male resident of the County of Los Angeles and the owner and managing agent of NU CONNECT GROUP LLC and is being included in this lawsuit pursuant to Labor Code Section 558.1 in that RENE PINEDA controlled the hours, wages, and working conditions of Plaintiff and other similarly situated aggrieved employees.

///

///

///

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

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

15 **GENERAL ALLEGATIONS**

16 7. Plaintiff started working for NU CONNECT GROUP from September 21, 2020
17 through October 25, 2020 as a Sales Representative/Customer Service. During his
18 employment tenure, Plaintiff was classified as an hourly, non-exempt employee and earned
19 approximately \$15 per hour. Plaintiff's schedule was Monday through Friday, 8am to 6pm.

20 8. It is Plaintiff's position that NU CONNECT GROUP has violated numerous Labor
21 Code Sections against Plaintiff and other similarly situated aggrieved employees, who include
22 all non-exempt, hourly employees who worked for NU CONNECT GROUP in the State of
23 California at their various locations during the relevant PAGA period.

24 9. NU CONNECT GROUP violated Labor Code § 1194, 1194.2, 1197, and 1197.1 because
25 it failed to pay Plaintiff and other similarly situated aggrieved employees for all hours worked,
26 including the statutory minimum wage for all hours worked and for "off the clock" work.
27 Plaintiff and others were not paid for all hours worked in violation of Labor Code Section 1194
28 and the applicable Industrial Welfare Commission Wage Order due to the fact that Plaintiff and

1 others were forced to work through their statutory meal periods and were not compensated for
2 those work hours. Moreover, Plaintiff and others were not actually paid for each hour they
3 worked as there was no formal timekeeping system at NU CONNECT GROUP. Plaintiff was
4 also not paid minimum wage for his training hours. The company also had an issue with rounding
5 down the hours that were worked by Plaintiff and other similarly situated aggrieved employees.
6 As such, the company would essentially time shave, not giving employees full credit for all hours
7 they actually worked and all hours wherein they were actually under the control of the company.

8 10. Pursuant to California Industrial Welfare Commission Order No. 4-2001, Section 9(B),
9 “When tools or equipment are required by the employer or are necessary to the performance of
10 a job, such tools and equipment shall be provided and maintained by the employer, except that
11 an employee whose wages are at least two (2) times the minimum wage provided herein may be
12 required to provide and maintain hand tools and equipment customarily required by the trade or
13 craft.” NU CONNECT GROUP unequivocally required its employees, including Plaintiff, to
14 provide his own cell phone and carrier plan for work purposes and in order to effectuate his job
15 duties. The latter was company policy. As such, NU CONNECT GROUP violated the
16 aforementioned IWC Wage Order(s) in that NU CONNECT GROUP required its employees,
17 including Plaintiff and others, to provide and maintain equipment customarily required by the
18 trade but did NOT compensate these employees at least two (2) times the minimum wage.

19 11. Based on the above minimum wage and “off the clock” allegations, NU CONNECT
20 GROUP also violated Labor Code §510 because it failed to pay Plaintiff and other aggrieved
21 employees overtime compensation, even though they worked more than 8 hours per day, 12
22 hours per day, and/or 40 hours per week throughout their employment. Plaintiff’s and other
23 aggrieved employees’ actual work hours entitled them to overtime compensation, however, NU
24 CONNECT GROUP did not compensate its hourly, non-exempt employees with the correct
25 amount of overtime. Overtime pay was not part of the company policy. After the initial week,
26 Plaintiff was extremely upset about the fact that he would work hours every day without being
27
28

1 compensated for it and that he was not receiving overtime compensation. He let his manager,
2 Rene, know about these labor code violations. Plaintiff also complained about the labor code
3 violations via phone. In addition, NU CONNECT GROUP did not take into account bonus
4 payments in calculating the regular rate of pay for purposes of then calculating the overtime rate
5 of pay.

6 12. NU CONNECT GROUP also violated Labor Code § 226.7 and the appropriate Industrial
7 Welfare Commission Wage Order (no. 4 or 7) because it failed to provide Plaintiff and other
8 similarly situated aggrieved employees with 10-minute rest periods for every four hours of work,
9 or majority portion thereof, throughout their employment. NU CONNECT GROUP did not
10 completely relieve Plaintiff and others of all duty during said rest periods. NU CONNECT
11 GROUP did not pay to Plaintiff and others one additional hour of pay at Plaintiff's regular rate
12 of compensation for each workday that one or more statutory rest periods was not provided. It
13 was not part of the company policy for employees such as Plaintiff to take rest breaks or at least
14 timely, uninterrupted rest breaks. Moreover, it would not have been possible for employees such
15 as Plaintiff to take such rest breaks due to there being no one else to relieve Plaintiff of his work
16 duties. As such, the culture at NU CONNECT GROUP did not lend itself to the employees
17 receiving statutory rest breaks wherein they were relieved of all work duties. The environment
18 at NU CONNECT GROUP was not conducive to receiving statutory rest breaks under California
19 law and timely, statutory rest breaks were not authorized or enforced.

20 13. NU CONNECT GROUP violated Labor Code §§ 512 and 226.7 along with Industrial
21 Welfare Commission Wage Order (no. 4 or 7) because it failed to provide hourly, non-exempt
22 employees, including Plaintiff and others, the requisite 30-minute, uninterrupted meal periods
23 for every five (5) hours of work throughout their employment. NU CONNECT GROUP did not
24 completely relieve Plaintiff and other employees of all duty during said meal periods. NU
25 CONNECT GROUP did not pay to Plaintiff and its hourly, non-exempt employees one
26 additional hour of pay at their regular rate of compensation for each workday that one or more
27
28

1 statutory meal periods was not provided. Like the rest breaks and for all the same reasons cited
2 above, receiving a thirty-minute uninterrupted and timely meal break was not part of the
3 company culture and was not enforced at all by NU CONNECT GROUP . Consequently, it was
4 the normal practice and custom of NU CONNECT GROUP not to authorize, permit, and enforce
5 timely statutory meal periods. Furthermore, any argument by NU CONNECT GROUP that the
6 employees signed an “On Duty Meal Period Agreement” would not hold water since the nature
7 of their job did not prevent them from being relieved of all work duties and the company could
8 have hired “floaters” to relieve the different sales representatives/customer service personnel for
9 their statutory meal and rest breaks.

10 14. Furthermore, during the relevant time period and based on the above, NU CONNECT
11 GROUP failed to pay Plaintiff and others all wages due to them within any time period specified
12 by California Labor Code section 204.

13 15. NU CONNECT GROUP was also in violation of California Labor Code section 226(a),
14 by failing to include pertinent information on the wage statements, including but not limited to,
15 the full and correct name of the legal employer along with the employer’s correct legal address,
16 all hours worked (including “off the clock” hours and overtime), all applicable hourly rates in
17 effect, the correct identifying information for each employee, gross wages earned, net wages
18 earned, premium pay for the missed meal and rest breaks, the correct start and end of the pay
19 period, all deductions, and business expense reimbursement, among others. As such, NU
20 CONNECT GROUP did not provide Plaintiff and other similarly situated aggrieved employees
21 with complete, accurate itemized wage statements.

22 16. During the relevant time period, NU CONNECT GROUP also failed to keep accurate
23 and complete payroll records showing the actual hours worked per day and the wages paid to
24 Plaintiff and others pursuant to California Labor Code sections 1174(d).

25 17. NU CONNECT GROUP also violated Labor Code § 203 because it willfully failed to
26 pay Plaintiff and other similarly situated aggrieved employees earned and due wages upon
27
28

1 separation of employment, either immediately upon involuntary termination, or within 72 hours
2 of resignation. These earned but unpaid wages include compensation for all hours worked,
3 including minimum wages, overtime compensation, premium pay for missed meal and rest
4 breaks, and business expense reimbursement.

5 18. Also, during the relevant time period, Plaintiff and other aggrieved employees incurred
6 necessary, business-related expenses and costs that were not reimbursed by NU CONNECT
7 GROUP. These costs include, but are not limited to, the use of personal cell phones for work
8 purposes as NU CONNECT GROUP did not provide Plaintiff and others with company phones.
9 Plaintiff was advised by his supervisor, Rene Pineda, that Plaintiff needed to buy his own battery
10 bank and needed an additional phone (and an additional carrier), which was necessary to approve
11 more customers and was required to have unlimited data. Plaintiff paid for all of these expense
12 and was not reimbursed. Accordingly, NU CONNECT GROUP was in violation of California
13 Labor Code sections 2800 and 2802.

14 19. Moreover, NU CONNECT GROUP failed to provide sick pay pursuant to Labor Code
15 section 246 and also failed to provide Worker's Compensation coverage for Plaintiff and other
16 aggrieved employees in violation of Labor Code Section 3700.5.

17 **FIRST CAUSE OF ACTION**

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

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

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

22 20. Plaintiff re-alleges and incorporates by reference each and every allegation in
23 paragraphs 1 through 19, inclusive, of this Complaint as though fully set forth herein.

24 21. At all times relevant herein, Defendants were required to compensate its employees for
25 all hours worked upon reporting for work at the appointed time stated by the employer
26 pursuant to Industrial Welfare Commission Order 4-2001, California Code of Regulations,
27
28

1 Title 8, Section 11040 and/or Industrial Welfare Commission Order 7-2001, California Code of
2 Regulations, Title 8, Section 11070.

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

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

8 24. As a proximate result of the aforementioned violations, Plaintiff has been damaged in
9 an amount according to proof at time of trial, but in an amount in excess of the jurisdiction of
10 this Court.

11 25. Defendants' conduct described herein violates Labor Code Section 512, 558, 1194, and
12 1198. Therefore, pursuant to Labor Code Sections 218.5, 512, 558, and 1194, Plaintiff is
13 entitled to recover damages for the nonpayment of wages for all hours worked, penalties, plus
14 reasonable attorney's fees and costs of suit.

15 26. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
16 along with any allowable interest, penalties, attorney's fees, and costs which will equal an
17 amount known to Plaintiff once he has obtained all of his payroll records from
18 Defendants.

19 **SECOND CAUSE OF ACTION**

20 **FAILURE TO PAY MINIMUM WAGES**

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

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

23 27. Plaintiff re-alleges and incorporates by reference each and every allegation in
24 paragraphs 1 through 26, inclusive, of this Complaint as though fully set forth herein.

25 28. Pursuant to Labor Code Sections 1194, 1194.2 and 1197, it is unlawful for an employer
26 to suffer or permit a California employee to work without paying wages at the minimum wage
27 rate for all hours worked as required by the applicable Industrial Welfare Commission
28

1 (hereinafter “IWC”) Wage Order No. 4-2001, codified at California Code of Regulations, Title
2 8, Section 11040, subdivision 4 and/or Wage Order No. 7-2001, codified at California Code of
3 Regulations, Title 8, Section 11070, subdivision 4.

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

8 30. During his employment, Plaintiff was regularly required as a matter of uniform
9 policy and practice to work, and in fact worked, as an employee of Defendants and Plaintiff
10 was paid less than the minimum wage rate by Defendants for hours worked in violation of
11 California Labor Code Section 1197 and the applicable California Industrial Wage
12 Commission wage order(s).

13 31. Plaintiff was, at all relevant times, under the control of Defendants and suffered or
14 permitted to work by Defendants. Defendants’ acts or omissions in failing to adequately
15 compensate Plaintiff were not in good faith nor were there reasonable grounds for Defendants
16 to believe that their acts or omissions were not contrary to California law.

17 32. For all hours worked by Plaintiff for which he was paid less than the minimum wage
18 rate by Defendants, Plaintiff is entitled to not less than the applicable California minimum
19 wage rate and, pursuant to Labor Code Section 1194.2(a), liquidated damages in an amount
20 equal to unpaid minimum wages and interests thereon. Pursuant to Labor Code Section 1194,
21 Plaintiff is also entitled to attorney’s fees, costs and interests according to proof.

22 33. 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.

25 **THIRD CAUSE OF ACTION**

26 **FAILURE TO PAY OVERTIME**

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

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

2 34. Plaintiff re-alleges and incorporates by reference each and every allegation in
3 paragraphs 1 through 33, inclusive, of this Complaint as though fully set forth herein.

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

12 36. Plaintiff was a non-exempt employee entitled to the protections of the California
13 Industrial Welfare Commission Order No. 4-2001, California Code of Regulations, Title 8,
14 Section 11040 and/or California Industrial Welfare Commission Order No. 7-2001, California
15 Code of Regulations, Title 8, Section 11070.

16 37. Plaintiff worked more than eight (8) hours in a single workday or forty (40) hours in a
17 single workweek on numerous occasions.

18 38. Plaintiff worked more than twelve (12) hours in a single workday.

19 39. Plaintiff was entitled to the above overtime premiums.

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

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

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

26 43. Plaintiff worked at least one pay period in which he was not properly paid overtime
27 within the three (3) years prior to the initiation of this lawsuit.
28

1 44. Defendants know or should know the actual dates of overtime worked, the amount of
2 overtime worked, and the amount of unpaid overtime due.

3 45. As a proximate result of Defendants' violations, Plaintiff has been damaged in an
4 amount according to proof at time of trial, but in an amount in excess of the jurisdiction of this
5 Court.

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

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

13
14 **FOURTH CAUSE OF ACTION**

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

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

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

18 48. Plaintiff re-alleges and incorporates by reference each and every allegation in
19 paragraphs 1 through 47, inclusive, of this Complaint as though fully set forth herein.

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

22 50. Defendants knowingly and intentionally did not furnish Plaintiff with any pay stubs
23 that accurately reflected all information required by Labor Code Section 226, including but not
24 limited to, accurate figures for gross wages earned, net wages earned, total hours worked by
25 the employee (regular and overtime), all deductions, premium pay for missed rest breaks
26 and meal breaks, the correct start and end of the pay period, the correct name and address of
27 the legal employer, and business expense reimbursement. Therefore, Defendants failed to
28

maintain and provide accurate itemized wage statements to Plaintiff in accordance with California Labor Code Section 226(a).

51. 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.

52. 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.

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

FIFTH CAUSE OF ACTION

FAILURE TO PAY WAGES WHEN EMPLOYMENT ENDS

(California Labor Code Sections 201, 203)

(Plaintiff against all named defendants and all DOE defendants)

54. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 53, inclusive, of this Complaint as though fully set forth herein.

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

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

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

6 58. After Plaintiff's employment with Defendants ended, Defendants willfully refused and
7 continue to refuse to pay his unpaid wages as required by Labor Code Section 203.

8 59. 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. Moreover, Plaintiff prays for the above-mentioned money from 3 years immediately
11 preceding the filing of this lawsuit.

12 60. Under this cause of action, Plaintiff also prays for attorney's fees and costs under
13 California Labor Code Section 218.5 for time spent pursuing the non-payment of wages as set
14 forth herein. Plaintiff also prays for interest under California Labor Code Section 218.6.

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

18 **SIXTH CAUSE OF ACTION**

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

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

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

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

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

26 64. At all times relevant during the liability period, Defendants failed to pay Plaintiff the
27 full amount of all owed wages when due as required by California Labor Code Section 204.
28

1 65. Defendants failed to pay Plaintiff all wages earned each pay period. Plaintiff is
2 informed, believes, and thereon alleges, that all times relevant during the liability period,
3 Defendants maintained a policy or practice of not paying Plaintiff wages for all hours worked,
4 including overtime hours and the minimum wage as well as premiums for missed rest breaks
5 and meal breaks.

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

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

13 **SEVENTH CAUSE OF ACTION**

14 **VIOLATION OF LABOR CODE SECTION 558**

15 **(California Labor Code Section 558)**

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

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

19 69. California Labor Code Section 558 states that any person acting on behalf of an
20 employer who violates, or causes to be violated, a section of this chapter or any provision
21 regulating hours and days of work in any order of the Industrial Welfare Commission shall be
22 subject to a civil penalty for any initial violation, fifty dollars (\$50) for each underpaid
23 employee for each pay period for which the employee was underpaid in addition to an amount
24 sufficient to recover underpaid wages. The civil penalty for each subsequent violation is one
25 hundred dollars (\$100) for each underpaid employee for each pay period for which the
26 employee was underpaid in addition to an amount sufficient to recover underpaid wages.
27 Plaintiff claims penalties for five (5) years immediately preceding the date this lawsuit was
28

1 filed.

2 70. Plaintiff hereby alleges that named Defendants violated Labor Code Section 558.

3 Thus, Defendants are subject to civil penalties under the following laws:

- 4 a. California Labor Code Section 558. Defendants failed to pay Plaintiff regular and
5 overtime wages for overtime hours worked. As such, Defendants violated Section
6 558 under which penalties are due. Plaintiff therefore prays for penalties of \$50.00
7 for the first pay period and \$100.00 for each subsequent violation for each pay
8 period for which Plaintiff was underpaid in addition to an amount sufficient to
9 recover underpaid wages.
- 10
- 11 b. California Labor Code Section 218.5 for recovery of costs and attorney's fees for
12 relief associated with Plaintiff's prosecution of this cause of action under California
13 Labor Code Sections 200, et seq. Defendants knowingly violated labor laws by not
14 paying Plaintiff for his overtime hours worked and for all hours worked.
- 15
- 16 c. California Labor Code Section 211 and 218.5 for recovery of costs and attorney's
17 fees for relief associated with Plaintiff's prosecution of this cause of action under
18 California Labor Code Sections 200, et seq.

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

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

24 **EIGHTH CAUSE OF ACTION**

25 **FAILURE TO MAINTAIN ACCURATE RECORDS**

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

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

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

3 74. Labor Code section 1174(d) requires that employers, including Defendants, maintain
4 accurate records showing the hours worked daily by its employees and to whom wages were
5 paid.

6 75. Additionally, the "Records" section of the applicable IWC Wage Order obligates the
7 employer, including Defendants, to keep accurate information with respect to each one of their
8 employees including, but not limited to, the total wages paid each payroll period, and time
9 records showing when the employee begins and ends each work period, meal periods, split
10 shift intervals; the total daily hours worked; the total hours worked in the payroll period, and
11 the applicable rates of pay.

12 76. Pursuant to Labor Code section 1174.5, any person employing labor who willfully fails
13 to maintain accurate and complete records required by Labor Code section 1174(d) is subject
14 to a penalty. On information and belief, Defendants intentionally failed to maintain accurate
15 records of Plaintiff's total daily hours, the total hours worked in the payroll period, the
16 applicable rates of pay, and total wages earned for the payroll period.

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

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

22 **NINTH CAUSE OF ACTION**

23 **FAILURE TO GIVE REST BREAKS**

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

25 79. Plaintiff re-alleges and incorporates by reference each and every allegation in
26 paragraphs 1 through 78, inclusive, of this Complaint as though fully set forth herein.

27 80. Plaintiff brings this cause of action under the following laws, for the following reasons:
28

- 1 a. Title 8 of the California Code of Regulations Sections 11040(12)(A) and/or
2 11070(12)(A), which provide that every employer shall authorize and permit all
3 employees to take rest periods, which insofar as practicable shall be in the middle of
4 each work period. The authorized rest period time shall be based on the total hours
5 worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major
6 fraction thereof;
- 7 b. Title 8 of the California Code of Regulations Sections 11040(12)(B) and/or
8 11070(12)(B), which provides that if an employer fails to provide an employee a
9 rest period in accordance with the applicable provisions of this order, the employer
10 shall pay the employee one (1) hour of pay at employee's regular rate of
11 compensation for each workday that the rest period is not provided;
- 12 c. Title 8 of the California Code of Regulations sections 11040(20)(A) and/or
13 11070(20)(A), which penalizes the employer \$50.00 for each initial violation, per
14 employee, of any provision of the Wage Order, and \$100.00 for each additional
15 violation thereafter per employee; and
- 16 d. California Labor Code section 226.7, which states that (a) no employer shall require
17 any employee to work during any rest period mandated by an applicable order of
18 the Industrial Welfare Commission, and (b) if an employer fails to provide an
19 employee a rest period in accordance with an applicable order of the Industrial
20 Welfare Commission, the employer shall pay the employee one (1) additional hour
21 of pay at employee's regular rate of compensation for each work day that the rest
22 period is not provided.

23
24
25
26 81. Plaintiff alleges that he was not authorized and permitted to take a ten (10) minute
27
28

1 rest break after every four (4) hours of work or major fraction thereof, as required by California
2 law.

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

7 83. Plaintiff also prays for Labor Code section 218.5 recovery of costs and attorney's
8 fees as well as interest under Labor Code section 218.6.

9 84. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
10 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
11 trial.
12

13 **TENTH CAUSE OF ACTION**

14 **FAILURE TO GIVE MEAL BREAKS**

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

16 85. Plaintiff re-alleges and incorporates by reference each and every allegation in
17 paragraphs 1 through 84, inclusive, of this Complaint as though fully set forth herein.

18 86. Plaintiff brings this cause of action under the following laws, for the following
19 reasons:
20

- 21 a. California Labor Code section 512(a), which requires that employees be given a 30-
22 minute uninterrupted meal break after five (5) hours of work, and a second
23 uninterrupted meal break after ten (10) hours of work;
24
25 b. California Labor Code section 226.7, which states that (a) no employer shall require
26 any employee to work during any meal period mandated by an applicable order of
27 the Industrial Welfare Commission, and (b) if any employer fails to provide an
28

1 employee a meal period in accordance with an applicable order of the Industrial
2 Welfare Commission, the employer shall pay the employee one (1) additional hour
3 of pay at the employee's regular rate of compensation for each workday that the
4 meal period is not provided;

- 5 c. California Industrial Welfare Commission Order No. 4 and/or 7 section 11(B), as
6 codified under Title 8 of the California Code of Regulations Section 11040 and/or
7 11070, which state that if an employer fails to provide an employee a meal period in
8 accordance with the applicable provisions of the Wage Order, the employer shall
9 pay the employee one (1) hour of pay at the employee's regular rate of
10 compensation for each workday that the meal period is not provided;
- 11 d. California Industrial Welfare Commission Wage Order No. 4 and/or 7 Section
12 7(A)(3), as codified under Title 8 of the California Code of Regulations Section
13 11040 and/or 11070, which require an employer to maintain records documenting
14 its employees' meal periods;
- 15 e. California Industrial Welfare Commission wage order No. 4 and/or 7 Section
16 20(A), as codified under California Code of Regulations Section 11040 and/or
17 11070, which penalizes the employer \$50.00 for each initial violation, per
18 employee, of any provision of the Wage Order, and \$100.00 for each additional
19 violation thereafter per employee; and
- 20 f. California Labor Code section 1171 and 1173, which have given the California
21 Labor Commission jurisdiction to enact Wage Orders (such as Wage Order nos. 4
22 and/or 7) as enforceable law.

23
24
25
26 87. Plaintiff alleges that he was not authorized and permitted to take relieved meal breaks
27
28

1 after five (5) hours of work. Plaintiff further alleges that he was not authorized and permitted to
2 take a second relieved meal break after ten (10) hours of work, as required by California law.
3 California Labor Code section 512(a) and California Industrial Welfare Commission Order No.
4 4 and/or 7, as codified under California Code of Regulations Sections 11040 and/or 11070 et.
5 seq., require that employees receive uninterrupted meal periods every five (5) hours of
6 consecutive work, and that the meal period be at least 30 minutes in length, wherein employee
7 is relieved of all work duty. California Labor Code section 226.7 provides that employers may
8 not require their employees to work through their meal periods. California Labor Code section
9 226.7 and California Code of Regulations section 11040 and/or 11070 require that if the
10 employer fails to provide the employee with an uninterrupted meal period, the employer must
11 pay the employee one (1) hour of pay for each workday that the meal period is not given.
12

13 88. Under this cause of action, Plaintiff prays for wages due to him under the statutes,
14 regulations, and wage orders alleged in this cause of action along with any allowable interest,
15 penalties, attorney's fees and costs according to proof at trial. Specifically, Plaintiff prays for
16 the foregoing moneys calculated from 3 years immediately preceding the filing of this lawsuit.
17

18 89. Plaintiff also prays for Labor Code section 218.5 recovery of costs and attorney's
19 fees as well as interest under Labor Code section 218.6.
20

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

25 **ELEVENTH CAUSE OF ACTION**

26 **PRIVATE ATTORNEYS GENERAL ACT**

27 **Individual and Representative Claim for PAGA penalties under California Labor Code**
28 **sections 201, 202, 203, 204 and/or 204b, 210, 226, 226.3, 226.7, 323, 246, 510, 512, 558,**
1174, 1174.5, 1194, 1197, 1198, 2802, 3700.5)

(Against All Named Defendants and all DOE Defendants)

91. Plaintiff re-alleges and incorporates by reference each and every allegation in

1 paragraphs 1 through 90, inclusive, of this Complaint as though fully set forth herein.

2 92. Pursuant to law, Plaintiff provided the required written notice to the LWDA and
3 Defendants of the specific violations of the California Labor Code that Defendants
4 and DOE defendants have violated and continue to violate.

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

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

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

17 96. Plaintiff is an "aggrieved employee" because Plaintiff was employed by the alleged
18 violator and had one or more of the alleged violations committed against him, and therefore is
19 properly suited to represent the interests of other current and former hourly, non-exempt
20 employees who worked for HIT MOBILE in the State of California during the PAGA period.

21 97. Based on the acts alleged above, Plaintiff, on behalf of himself and all other hourly,
22 non-exempt employees who worked for HIT MOBILE in the State of California during the
23 applicable PAGA period, seeks penalties under California Labor Code sections 2698 and 2699
24 because of Defendants' violations of numerous provisions of the California Labor Code as
25 alleged in this Complaint.

26 98. Plaintiff therefore has exhausted all administrative remedies required of him under
27 California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this
28

1 cause of action and pursue penalties in a representative action for Defendants' violations of the
2 Labor Code.

3 99. California Labor Code section 2699 et seq. imposes penalties upon culpable
4 Defendants for violating the Labor Code.

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

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

17 102. Plaintiff seeks penalties for Defendants' misconduct as alleged herein as permitted by
18 law. Specifically, Plaintiff seeks penalties under California Labor Code section 2699, for
19 the following:

20 Violations of California Labor Code sections 201, 202, 203, 204 and/or 204b, 210, 226,
21 226.3, 226.7, 232, 246, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1198, 2802, 3700.5 via
22 2698 and 2699 and any other Labor Codes and Industrial Welfare Commission Wage
23 Orders (Order nos. 4 and/or 7) violated based on the facts alleged in this Complaint.

24 103. Pursuant to Labor Code section 2698 et seq., Plaintiff seeks to recover attorney's fees,
25 costs, and civil penalties on behalf of Plaintiff and other current and former aggrieved
26 employees as alleged herein in an amount to be shown according to proof at trial and within the
27 jurisdictional limits of this Court.
28

1 **TWELFTH CAUSE OF ACTION**

2 **FAILURE TO REIMBURSE FOR BUSINESS EXPENSES**

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

4 104. Plaintiff re-alleges and incorporates by reference each and every allegation in
5 paragraphs 1 through 103, inclusive, of this Complaint as thought fully set forth herein.

6 105. Labor Code section 2802 provides that “[a]n employer shall indemnify his or her
7 employee for all necessary expenditures or losses incurred by the employee in direct
8 consequence of the discharge of his or her duties.”

9 106. Beginning at least 3 years prior to the filing of this complaint, in order to discharge
10 their duties for Defendant, Plaintiff incurred reasonable and necessary expenses in the course
11 of completing his job duties, which were not reimbursed by Defendant. These expenses
12 include, but are not limited to, the use of personal cell phones for work purposes as NU
13 CONNECT GROUP did not provide Plaintiff and others with company phones. Plaintiff was
14 advised by his supervisor, Rene Pineda, that Plaintiff needed to buy his own battery bank and
15 needed an additional phone (and an additional carrier), which was necessary to approve more
16 customers and was required to have unlimited data. Plaintiff paid for all of these expense
17 and was not reimbursed

18 107. Plaintiff is entitled to reimbursement for these necessary expenditures, plus interest
19 and attorney’s fees and costs, under Labor Code section 2802.

20
21 **THIRTEENTH CAUSE OF ACTION**

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

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

24 **(Plaintiff against Defendant NU CONNECT GROUP LLC and all DOE defendants)**

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

27 109. By virtue of the foregoing statutes, regulations, and laws, the acts of Defendant
28

1 constitutes unfair and unlawful business practices under California Business and
2 Professions Code Section 17200, et seq.

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

6 111. For the four years preceding the filing of this action, Plaintiff has suffered damages
7 and request damages and/or restitution of all monies and profits to be disgorged from
8 Defendant in an amount according to proof at time of trial, but in excess of the
9 jurisdiction of this Court.

10 **PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiff prays for Judgment against Defendants and each of them, as
12 follows:

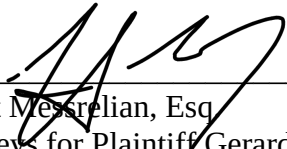
- 13 1. For compensatory damages including regular wages and overtime wages, according to
14 proof at trial;
- 15 2. For special damages to the extent allowed by law, according to proof at trial;
- 16 3. For restitution and disgorgement for all unfair business practices by Defendant NU
17 CONNECR GROUP LLC against Plaintiff in an amount according to proof;
- 18 4. For an order enjoining Defendant NU CONNECT GROUP LLC from further unfair
19 and unlawful business practices in violation of Business and Professions Code section
20 17200, et seq.;
- 21 5. For damages and penalties against Defendants under Labor Code section
22 226 for Plaintiff in an amount subject to proof at trial;
- 23 6. For damages and penalties pursuant to Labor Code section 203 against Defendants in
24 an amount subject to proof at trial;
- 25 7. For maximum civil penalties available under the Labor Code and applicable Wage
26 Order against Defendants as described more particularly in the Complaint and
27
28

representative PAGA claim;

8. For all remedies available to Plaintiff under the applicable Wage Order and the Labor Code including an award of unpaid wages, attorney's fees, costs, interest, liquidated damages, damages, penalties, and waiting time penalties according to proof to the extent permitted by law;
9. For the imposition of civil penalties and/or statutory penalties;
10. Reasonable attorney's fees where available by law, including but not limited to, pursuant to Labor Code section 2698 et seq., and the California Labor Code;
11. For one hour of wages due to Plaintiff for each work period of more than five (5) hours when Plaintiff did not receive an uninterrupted thirty (30) minute meal period.
12. For one hour of wages due to Plaintiff for each work period of at least three-and-a-half (3.5) hours when Plaintiff did not receive an uninterrupted ten (10) minute rest period.
13. Costs and expenses of suit incurred herein;
14. For all interest as allowed by law;
15. For such other and further relief as the Court deems just and proper.

DATED: February 2, 2021

MESSRELIAN LAW INC.

By 
Harout Messrelian, Esq.
Attorneys for Plaintiff Gerardo Murillo

//

//

//

//

//

//

//

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

DATED: February 2, 2021

By Harout Messrelian, Esq.
Attorneys for Plaintiff Gerardo Murillo