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Attorneys for Plaintiff and the Class

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF KERN**

DAMARIS MORALES, as an individual
and on behalf of all others similarly situated,

Plaintiff,

vs.

TRUCONNECT COMMUNICATIONS,
INC., a Delaware corporation; and DOES
1 through 50, inclusive,

Defendants.

Case No.: BCV-24-103803

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION COMPLAINT
FOR:**

- (1) VIOLATION OF LABOR CODE §§ 201-203**
- (2) VIOLATION OF LABOR CODE § 2698, *et seq.***

DEMAND OVER \$25,000

1 Plaintiff Damaris Morales (“Plaintiff”) hereby submits this class and representative action
2 complaint (“Complaint”) against Defendant TruConnect Communications, Inc. (“Defendant”)
3 and Does 1-50 (collectively, “Defendants”), as an individual and on behalf of all other similarly
4 situated current and former employees of Defendants, for penalties and/or damages under
5 California Labor Code for failure to pay sick pay at the regular rate of pay, as follows:

6 **INTRODUCTION**

7 1. This class action 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 Kern County because Defendants operate business locations in
23 this County, and Plaintiff worked for Defendants in this County.

24 **PARTIES**

25 7. Plaintiff is a former employee of Defendants. Plaintiff began working as an
26 associate in Defendants’ Bakersfield office during the relevant period. Throughout Plaintiff’s
27 employment, Plaintiff worked as a non-exempt, hourly employee.

28 8. During Plaintiff’s employment with Defendants, Plaintiff was paid various non-

1 discretionary wages, including without limitation, commissions and bonuses. Plaintiff was also
2 paid wages for sick time during this 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
8 TruConnect Communications, Inc. was and is a Delaware corporation doing business in the State
9 of California. Defendant is a wireless service provider that operates throughout the State of
10 California.

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. To
6 the extent said acts, conduct, and omissions were perpetrated by certain Defendants, each of the
7 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 of
22 Defendants in the State of California who were paid sick pay wages and non-discretionary
23 wages, including but not limited to, commissions, “earnings,” and/or bonuses, in the same
24 workweek during their employment and whose employment ended at any time between
25 November 1, 2021, through the present (the “Class”).

26 19. **Numerosity and Ascertainability:** The members of the Class are so numerous
27 that joinder of all members would be impractical, if not impossible. The identity of the members
28 of the Class is readily ascertainable by review of Defendants’ records, including payroll records.

1 Plaintiff alleges that Defendants failed to pay employees sick pay at the regular rate of pay in
2 violation of Labor Code §§ 201-203 and 246.

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

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

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

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

25 24. The California Labor Code and upon which Plaintiff bases these claims is broadly
26 remedial in nature. These laws and labor standards serve an important public interest in
27 establishing minimum working conditions and standards in California. These laws and labor
28 standards protect the average working employee from exploitation by employers who may seek

1 to take advantage of superior economic and bargaining power in setting onerous terms and
2 conditions of employment.

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

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

22 27. Such a pattern, practice, and uniform administration of corporate policy regarding
23 illegal employee compensation described herein is unlawful and creates an entitlement to
24 recovery by the Plaintiff and the Class identified herein, in a civil action, for all applicable
25 penalties and/or damages, reasonable attorneys' fees, and costs of suit according to the mandate
26 of California Labor Code §§ 201-203, 218.5, and Code of Civil Procedure § 1021.5.

27 28. Proof of a common business practice or factual pattern, which the named Plaintiff
28 experienced and is representative of, will establish the right of each of the members of the Class

1 to recovery on the causes of action alleged herein.

2 29. The Class is commonly entitled to a specific fund with respect to the
3 compensation illegally and unfairly retained by Defendants. The Class is commonly entitled to
4 restitution of those funds being improperly withheld by Defendants. This action is brought for
5 the benefit of the entire Class and will result in the creation of a common fund.

6 **FIRST CAUSE OF ACTION**

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

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

9 30. Plaintiff re-alleges and incorporates by reference the paragraphs above, as though
10 fully set forth herein.

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

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

19 33. Defendants violated Labor Code § 246 by failing to pay sick pay at the regular
20 rate of pay. Plaintiff and Class Members routinely earned non-discretionary remuneration,
21 including without limitation, commissions, “earnings,” and bonuses, thereby increasing their
22 regular rates of pay to amounts that were higher than their base rates of pay. However, whenever
23 sick pay was paid to Plaintiff and Class Members, it was paid at their base rates of pay rather
24 than the correct, higher regular rates of pay, as required under Labor Code § 246. Defendants
25 routinely deducted taxes and other withholdings from the wages that it paid Class Members in
26 the form of sick pay.

27 34. As a pattern and practice, Defendants regularly failed to pay Plaintiff and Class
28 Members their correct wages and accordingly owe waiting time penalties pursuant to Labor

Code § 203. Further, Plaintiff is informed and believes and based thereon alleges that such failure to pay sick pay at the correct regular rate was willful, such that Plaintiff and Class Members whose employment has separated are entitled to waiting time penalties pursuant to Labor Code §§ 201-203.

35. Such a pattern, practice, and uniform administration of corporate policy regarding illegal employee compensation as described herein is unlawful and creates an entitlement to recovery by the Plaintiff and the Class identified herein, in a civil action, for the unpaid balance of the full amount of damages and penalties, attorneys' fees, and costs of suit according to the mandate of California Labor Code §§ 201-203, 218.5, and 1194.

SECOND CAUSE OF ACTION

VIOLATION OF LABOR CODE § 2698, ET SEQ.

(BY PLAINTIFF AND AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS)

36. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as though fully set forth herein.

37. Plaintiff brings this cause of action as a proxy for the State of California and in this capacity, seeks penalties on behalf of all Aggrieved Employees from October 3, 2023, through the present, for Defendants' violations of Labor Code §§ 201-203, 246, 2698, *et seq.*, as identified above, for: (a) failing to pay sick pay at the regular rate of pay and pay all final wages owed in violation of Labor Code sections 201, 202, 203, and 246; and (2) failing to provide accurate, itemized wage statements in violation of Labor Code section 226(a).

38. On or about October 3, 2024, Plaintiff sent written notice to the California Labor & Workforce Development Agency ("LWDA") of Defendants' violation of Labor Code § 201-203, and 246, pursuant to Labor Code § 2698, *et seq.*, the Private Attorneys General Act ("PAGA"). Plaintiff also sent written notice of said Labor Code violations to Defendant via certified mail pursuant to Labor Code § 2699.3. As of the date of the filing of this Complaint, the LWDA has not provided written notice regarding whether it intends to investigate the Labor Code violations set forth in Plaintiff's written notice.

As such, pursuant to Labor Code section 2699(a), Plaintiff seeks recovery of any and all applicable civil penalties for Defendants' violation of Labor Code sections 201- 203, 246, and 2698 for the time period described above, on behalf of herself and 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 civil penalties according to proof pursuant to the PAGA, Labor Code §§ 201-203, 246, 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, and Code of Civil Procedure § 1021.5; and
7. For such other and further relief as the Court may deem just and proper.

DATED: December 10, 2024

DIVERSITY LAW GROUP, P.C.

By: 

Larry W. Lee
Kristen M. Agnew
Max W. Gavron
Kwanporn "Mai" Tulyathan
Attorneys for Plaintiff and the Class

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STATE OF CALIFORNIA]
]ss.
COUNTY OF LOS ANGELES]

On December 10, 2024, I served the following document(s) described as: **FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT** on the interested parties in this action as follows:

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on December 10, 2024, at Los Angeles, California.


Erika Mejia