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13

14 **UNITED STATES DISTRICT COURT**
15 **SOUTHERN DISTRICT OF CALIFORNIA**

16 BERNARDO BUCHSBAUM,
Individually and on behalf of all others
17 similarly situated,

18 Plaintiffs,

19 v.

20 DIGITAL INTELLIGENCE
SYSTEMS, LLC, a Delaware limited
liability company; T-MOBILE USA,
21 INC. a Delaware corporation; and
DOES 1 through 50, inclusive,
22

23 Defendants.

Case No. '20CV0706 BAS AGS

**DEFENDANT'S NOTICE OF
REMOVAL PURSUANT TO 28
U.S.C. § 1332(d)(2)**

Complaint Filed: March 4, 2020

24
25 PLEASE TAKE NOTICE that Defendant Digital Intelligence Systems, LLC
26 (herein "Defendant") hereby removes the above-captioned action, *Bernardo*
27 *Buchsbaum v. Digital Intelligence Systems, LLC.*, et al. in the Superior Court of the
28 State of California for the County of San Diego, Case No. 37-2020-00012175-CU-

1 OE-CTL, from the California Superior Court for the County of San Diego to the
2 United States District Court for the Southern District of California, pursuant to the
3 Class Action Fairness Act (CAFA), codified in relevant part at 28 U.S.C. §§ 1332(d)
4 and 1453.1. Defendant hereby provides a “short and plain statement of the grounds
5 for removal” pursuant to 28 U.S.C. § 1446(a).

6 **1. SUMMARY OF PLEADINGS**

7 On March 4, 2020, Plaintiff Bernardo Buchsbaum filed a complaint entitled
8 *Bernardo Buchsbaum v. Digital Intelligence Systems, LLC.*, et al. in the Superior
9 Court of the State of California for the County of San Diego, Case No. 37-2020-
10 00012175-CU-OE-CTL (the “State Court Action”). The State Court Action is a
11 putative class action.

12 Defendant submitted an answer for filing in the State Court Action on April 9,
13 2020 and served said answer upon all counsel of record on the same date.

14 The State Court file is attached collectively as **Exhibit A** to the Declaration of
15 Jennifer Kearns (“Kearns Declaration”) filed herewith. The summons and complaint
16 as attached as **Exhibit B**, and the Answer as **Exhibit C** to the Kearns Declaration.
17 Proof of service of the Complaint filed in the State Court Action upon DISYS’ agent
18 on March 13, 2020 is attached as **Exhibit D** to the Kearns Declaration. (See Kearns
19 Declaration, ¶¶ 1-4 and Exhibits A-D thereto.)

20 **2. NATURE OF THE COMPLAINT**

21 Plaintiff Buchsbaum alleges that he and other non-exempt employees who
22 worked for Defendant in California during the putative class period were denied meal
23 and rest breaks, forced to work off the clock, paid less than minimum wage, denied
24 overtime pay for hours worked in excess of eight per day, not reimbursed for all
25 business expenses, not paid their allegedly due wages (including but not limited to
26 allegedly accrued vacation time) upon separation and were not provided accurate
27 wage statements.

1 Defendant denies all of these allegations in their entirety.

2 **3. TIMELINESS OF REMOVAL**

3 A notice of removal must be filed within 30 days after receipt by service or
4 otherwise of the pleading which makes the defendant a party to the state action. 28
5 U.S.C. § 1446(b)(1).

6 Defendant’s agent for service of process was personally served with the
7 Complaint on March 13, 2020, and this notice is timely because it was filed on or
8 before April 13, 2020.

9 **4. STATEMENT OF JURISDICTION**

10 This case is removable to federal court pursuant to the Class Action Fairness
11 Act of 2005 (“CAFA”) because the putative class involves at least 100 persons, the
12 aggregate amount in controversy will be in excess of \$5 million, and there is diversity
13 of citizenship between the parties.

14 **5. THE AMOUNT IN CONTROVERSY IS MET**

15 Defendant contends that the amount in controversy requirement can be easily
16 exceeded by adding together the following categories of alleged damages or penalties,
17 which are discussed in turn below: (a) Labor Code 203 penalties; (b) Labor Code 210
18 penalties; (c) Labor Code 226 penalties; and (d) Rest Period penalties. Nothing herein
19 shall be construed to be an admission on the part of Defendant that any such damages
20 or penalties are due or owing. We merely demonstrate that for purposes of evaluating
21 removal and its \$5 million CAFA threshold, said threshold is easily exceeded.

22 **a. Purported Labor Code 203 Penalties**

23 Plaintiff contends that Defendant committed a myriad of wage and hour
24 violations and that it failed to pay class members all wages due them at the time of
25 separation. (Complaint, ¶¶ 11, 27, 32, 39, 44, 50, 56, 69). Plaintiff posits that
26 Defendant “used uniform policies and procedures that have consistently violated
27 California labor laws and regulations and caused Plaintiff and the Class to suffer the
28 same or similar injuries.” (Complaint, ¶ 28(i).)

1 As of March 10, 2020, there were 996 putative class members who were
2 nonexempt employees who worked for DISYS in California between March 4, 2016
3 and March 10, 2020 (the date on which the putative class data set was culled) and who
4 were paid on a weekly basis¹, of whom 684 are former employees (hereinafter,
5 “Separated Employees.”) Declaration of David Goggin, ¶¶ 5, 8.

6 All of the 684 former employees separated from Defendant more than thirty
7 (30) days ago. (Declaration of David Goggin, ¶ 8.)

8 Under Labor Code §201, terminated employees must be paid all wages due
9 upon termination. Under Labor Code §202, resigning employees must be paid all
10 wages due within 72 hours of their resignations. And, under Labor Code §203, an
11 employer that willfully fails to pay an employee all wages due him/her as required by
12 Labor Code §§ 201-202 may be liable for “waiting time penalties,” which are
13 calculated at the rate of one day’s wages for each day the unpaid wages remain
14 outstanding, up to a maximum of thirty (30) days of waiting time penalties per former
15 employee.²

16 Attached as Exhibit 1 to the Declaration of David Goggin (“Goggin
17 Declaration”) is a spread sheet prepared by DISYS that identifies, by employee
18 number, the putative class members who were hourly employees paid on a weekly
19 basis who worked for DISYS in California between March 4, 2016 and March 10,
20 2020, the date on which the list of putative class members was culled. As stated in
21 paragraph 8 of Mr. Goggin’s Declaration, 684 of the individuals on the spread sheet
22 had separated from their employment with DISYS as of March 10, 2020. For each
23 such Separated Employee, the spread sheet contains his or her last hourly rate of pay

24 ¹ There are additional putative class members who were paid on a biweekly basis, but for purposes
25 of this removal petition we rely upon the data pertaining to putative class members who were paid
on a weekly basis.

26 ² Nothing herein should be construed as any admission that Defendant “willfully” failed to pay any
27 employee wages that were due to him or her upon separation, and Defendant specifically reserves its
28 right to assert that underpayments of wages to Separated Employees, if any, were inadvertent or that
there was a bona fide good faith dispute about whether such wages were due and owing.

1 (Column H). The spread sheet also includes in Column E the average number of
2 hours worked per day, which was calculated by dividing the employee's average
3 number of hours per week (Column D) by five. A presumed Labor Code 203 penalty,
4 reflected in Column I, is calculated by multiplying the employee's average number of
5 hours per day (Column E) by his or her final rate of pay (Column H) and multiplying
6 the result by thirty (reflecting fact that all Separated Employees on the spread sheet
7 have been separated for more than 30 days). See Goggin Declaration, ¶ 9(i) and
8 Exhibit 1 thereto, particularly Column I.

9 Using this analysis, if each Separated Employee was owed any amount of
10 wages upon termination that remain unpaid, the aggregate value of the Separated
11 Employees' presumed Labor Code § 203 penalties is \$5,557,143.29, which more than
12 satisfies the CAFA threshold of \$5 million.

13 **b. Labor Code 210 Penalties**

14 In his First Cause of Action, Plaintiff contends that Defendant failed to pay all
15 earned wages within the time periods mandated by Labor Code §204. He also alleges
16 that he and other putative class members worked off the clock during meal breaks for
17 which they were not compensated. He further alleges that he and putative class
18 members were not paid daily overtime when they worked more than eight (8) hours in
19 a day, and also contends that he and other putative class members were not paid their
20 accrued and unused vacation time upon separation. In the First Cause of Action,
21 Plaintiff further alleges that the putative class members are entitled to recover the
22 amounts unpaid as well as penalties under Labor Code § 210.”

23 Focusing solely upon the alleged Labor Code §210 penalties³, if we assume that
24 each of the 966 putative class members listed on Exhibit 1 to the Goggin Declaration
25 was underpaid on just one occasion, each such employee would allegedly be entitled
26 to at least one civil penalty of \$100 “for any initial violation.” Based upon Plaintiff’s

27 ³ And not, for purposes of this removal petition, the amount of the allegedly unpaid wages
28 themselves.

1 allegations, the presumed aggregate Labor Code §210 penalty would be at least
2 \$96,600.00.

3 **c. Wage Statement Penalties**

4 Plaintiff alleges that Defendant “knowingly and intentionally” failed to provide
5 putative class members with timely and accurate wage and hour statements as required
6 by Labor Code Section 226. (Complaint, ¶61.) This allegation clearly evidences
7 plaintiff’s belief that any purported non-compliance with Labor Code Section 226(a)
8 was not inadvertent. Under plaintiff’s theory, each putative class member suffered
9 one initial violation of Labor Code Section 226(a) – i.e., his or her first pay period,
10 with a penalty of \$50. Under plaintiff’s stated theory, all subsequent pay periods
11 would carry a \$100 penalty, up to a per-person maximum of \$4,000.00. (Complaint, ¶
12 63.)

13 Plaintiff’s allegations makes clear that he contends that Defendant “knowingly
14 and intentionally” failed to provide him and other putative class members with
15 accurate wage statements. In light of those allegations, we apply Plaintiff’s theory,
16 which is that each putative class member would be entitled to a \$50 penalty for his or
17 her first pay period within the putative class period for the purported “initial”
18 violations, and \$100 for each pay period thereafter, up to a \$4,000 maximum per
19 person. In order to reach the statutory maximum of \$ 4,000 for wage statement
20 violations, an employee would need to work at least 41 pay periods, the first of which
21 would result in a \$50 penalty, and the remaining 40 pay periods resulting in a penalty
22 of \$100 per pay period. (A person who worked exactly 40 pay periods in which there
23 were violations each pay period would have a total aggregate penalty of \$3,950.)

24 There are 298 persons listed on Exhibit 1 to the Goggin Declaration who
25 worked 41 or more pay periods. (See Declaration of Jennifer Kearns, ¶ 5 and Exhibit
26 E thereto.) These are persons who, under Plaintiff’s theory of recovery, would be
27 entitled to the statutory maximum of \$4,000 per person for alleged wage statement
28

1 violations. The aggregate purported wage statement penalties for this group of 298
2 persons is \$1,192,000.

3 Nothing herein should be construed to constitute an admission on the part of
4 Defendant that any wage statement penalties are due or owing. The calculations
5 above are offered purely for the purpose of demonstrating that, applying Plaintiff's
6 theory of recovery, the CAFA jurisdictional threshold is easily met.

7 **d. Rest Period Violations**

8 Plaintiff alleges that he and other putative class members "almost never
9 received rest periods." (Complaint, ¶ 8.) He alleges that the same, violative
10 "policies" were applied to all other members of the proposed class. (Complaint ¶ 12.)
11 The putative class members were paid on a weekly basis. (See Declaration of David
12 Goggin, ¶ 6.) Thus, each pay period typically contained five (5) working days. For
13 purposes of this CAFA threshold, Defendant will assume that Plaintiff's assertion that
14 he and others "almost never received rest periods" means that putative class members
15 received rest periods only once per weekly pay period, resulting in four (4) days per
16 pay period in which rest periods were allegedly not provided.⁴ Exhibit 1 to the
17 Declaration of David Goggin shows, for each putative class member, the number of
18 weekly pay periods worked (Column B) and the number of rest periods each such
19 putative class member presumably was denied if not provided with rest breaks in 4 out
20 of 5 work days (Column F). If each person on Exhibit 1 to the Goggin Declaration
21 was denied rest periods on 4 of 5 days each work week, the number of presumed rest
22 period premiums would be reflected in Column F and when that value is multiplied by
23 the employee's lowest hourly rate during the putative class period, the dollar value of
24 his or her presumed rest period premiums due would appear in Column J. The
25 aggregate total value of rest period premiums using this model would be
26 \$5,490,796.16.

27 ⁴ This assumption means that we assume that Plaintiffs received rest periods 20% of the time. We
28 could easily have used a much lower assumed frequency, given Plaintiff's allegation that he and
others "almost never" were provided rest periods.

1 Because some of the workers appear to have worked less than a full pay period,
2 we have replicated the information from Exhibit 1 to the Goggin Declaration and only
3 included those individuals who worked two (2) or more pay periods. See Kearns
4 Declaration, ¶ 6 and Exhibit F thereto. Exhibit F to the Kearns Declaration lists the
5 employee numbers of individuals who worked at least 2 pay periods. Each is
6 presumed to have denied 4 rest periods per pay period. The total number of presumed
7 missed rest periods for each person is reflected and multiplied by his or her lowest
8 hourly rate. By eliminating the persons who worked fewer than 2 pay periods, the
9 aggregate presumed dollar value of allegedly denied rest periods is \$5,451,430.38.

10 Nothing herein should be construed to constitute an admission on the part of
11 Defendant that rest periods were not provided to the Plaintiff and putative class
12 members or that any premiums are due or owing.

13 **6. TOTAL AMOUNT IN CONTROVERSY**

14 Adding together the categories of alleged damages and presumed monetary
15 values, after applying Plaintiff's theories of recovery, there would be (a)
16 \$5,557,143.29 in Labor Code 203 penalties; (b) \$96,600.00 in Labor Code 210
17 penalties; (c) \$1,192,000.00 in Labor Code 226 wage statement penalties; and (d)
18 \$5,451,430.38 in rest period premiums. The amount in controversy in this case easily
19 exceeds the jurisdictional minimum of five million dollars (\$5M).

20 **7. SUPPLEMENTAL JURISDICTION**

21 Under 28 U.S.C. § 1367(a), in any civil action of which the district courts have
22 original jurisdiction, the district courts have supplemental jurisdiction over all other
23 claims that are so related to the claims in the action that they form part of the same
24 case or controversy. In order for state law claims to remain in federal court, "[t]he
25 state and federal claims must derive from a common nucleus of operative fact."
26 *United Mine Workers v. Gibbs*, 383 U.S. 715, 725 (1966).

27 Here, each of Plaintiff's claims arise from the same actions allegedly taken by
28 Defendant. Therefore, this Court has supplemental jurisdiction.

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8. VENUE

Venue lies in this Court because Plaintiff’s Action is pending in this district. See 28 U.S.C. § 1441(a).

9. CITIZENSHIP

There is diversity of citizenship between the Parties. Plaintiff is a resident of the state of California. Defendant is an LLC formed under the laws of the state of Delaware and, notwithstanding Plaintiff’s claim that it is “headquartered in Santa Barbara, California,” Defendant’s headquarters and principal place of business is located in McLean, Virginia. See Declaration of David Goggin, ¶4.

10. CONCLUSION

Because Defendant has timely filed a Notice of Removal of an action, and this case is removable pursuant to the Class Action Fairness Act of 2005, the action must be removed to this Court.

Defendant will timely file a Notice to Adverse Party of Removal to Federal Court in the Superior Court of the State of California.

In filing this Notice of Removal, Defendant does not waive, and specifically reserves, all defenses, exceptions, rights and motions. No statement herein, or any omission, shall be deemed to constitute an admission by Defendant of any of the allegations or damages sought in the Complaint.

Dated: April 13, 2020

DUANE MORRIS LLP

By: s/Jennifer Kearns
Jennifer A. Kearns
Meredith P. Grant
Attorneys for Defendant Digital Intelligence
Systems, LLC

1 Defendant T-Mobile USA, Inc. hereby joins in Digital Intelligence Systems,
2 LLC's Notice of Removal of the above-captioned action, *Bernardo Buchsbaum v.*
3 *Digital Intelligence Systems, LLC.*, et al. in the Superior Court of the State of
4 California for the County of San Diego, Case No. 37-2020-00012175-CU-OE-CTL,
5 from the California Superior Court for the County of San Diego to the United States
6 District Court for the Southern District of California, pursuant to the Class Action
7 Fairness Act (CAFA), codified in relevant part at 28 U.S.C. §§ 1332(d) and 1453.1.

8
9 Dated: April 13, 2020

**OGLETREE, DEAKINS, NASH, SMOAK
& STEWART, P.C.**

10
11 By: s/Spencer C. Skeen
12 Spencer C. Skeen
13 Attorneys for Defendant T-Mobile USA, Inc.
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EXHIBIT B

**SUMMONS
(CITACION JUDICIAL)**

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

03/04/2020 at 03:18:10 PM
Clerk of the Superior Court
By Erika Engel, Deputy Clerk

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

DIGITAL INTELLIGENCE SYSTEMS, LLC, a Delaware limited liability company; * Additional Parties Attachment form is attached

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

BERNARDO BUCHSBAUM, Individually and on behalf of all others similarly situated,

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es):

CASE NUMBER:
(Número del Caso): 37-2020-00012175-CU-OE-CTL

Superior Court of California, County of San Diego
330 West Broadway, San Diego, CA 92101

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Larry W. Lee (SBN 228175)/Diversity Law Group, 515 S. Figueroa St. #1250, LA, CA 90071, 213-488-6555

DATE: 03/05/2020
(Fecha)

Clerk, by
(Secretario)

E. Engel
E. Engel

, Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).



NOTICE TO THE PERSON SERVED: You are served

1. as an individual defendant.
2. as the person sued under the fictitious name of (specify):
3. on behalf of (specify):

under: <input type="checkbox"/> CCP 416.10 (corporation)	<input type="checkbox"/> CCP 416.60 (minor)
<input type="checkbox"/> CCP 416.20 (defunct corporation)	<input type="checkbox"/> CCP 416.70 (conservatee)
<input type="checkbox"/> CCP 416.40 (association or partnership)	<input type="checkbox"/> CCP 416.90 (authorized person)
<input type="checkbox"/> other (specify):	
4. by personal delivery on (date):

SUM-200(A)

SHORT TITLE: Buchsbaum v. Digital Intelligence Systems, LLC, et al.	CASE NUMBER:
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INSTRUCTIONS FOR USE

- ➔ This form may be used as an attachment to any summons if space does not permit the listing of all parties on the summons.
- ➔ If this attachment is used, insert the following statement in the plaintiff or defendant box on the summons: "Additional Parties Attachment form is attached."

List additional parties (Check only one box. Use a separate page for each type of party.):

Plaintiff
 Defendant
 Cross-Complainant
 Cross-Defendant

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

1 Jonathan M. Lebe (State Bar No. 284605)
Jon@lebelaw.com
2 Zachary Gershamn (State Bar No. 328004)
Zachary@lebelaw.com
3 **Lebe Law, APLC**
777 S. Alameda Street, Second Floor
4 Los Angeles, CA 90021
Telephone: (213) 358-7046

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
03/04/2020 at 03:18:10 PM
Clerk of the Superior Court
By Erika Engel, Deputy Clerk

5
6 Larry W. Lee (State Bar No. 228175)
Lwlee@diversitylaw.com
7 Mai Tulyathan (State Bar No. 316704)
ktulyathan@diversitylaw.com
8 **Diversity Law Group, A P.C.**
515 S. Figueroa St., Suite 1250
9 Los Angeles, CA 90071
Tel: (213) 488-6555

10
11 Attorneys for Plaintiff and the Class

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

14
15 BERNARDO BUCHSBAUM, Individually
and on behalf of all others similarly situated,

16 Plaintiff,

17 vs.

18 DIGITAL INTELLIGENCE SYSTEMS, LLC,
19 a Delaware limited liability company; T-
MOBILE USA, INC., a Delaware corporation;
20 and DOES 1 through 50, inclusive,

21 Defendants.

Case No.: 37-2020-00012175-CU-OE-CTL

CLASS ACTION COMPLAINT FOR:

- 1. **Failure To Pay Earned Wages (Cal. Lab. Code §§ 204, 210);**
- 2. **Failure To Pay Minimum Wages (Cal. Lab. Code §§ 510, 1182.12, 1194, 1197, 1197.1, 1198);**
- 3. **Failure To Pay Overtime Compensation (Cal. Lab. Code §§ 510, 1198);**
- 4. **Failure To Provide Meal Breaks (Cal. Lab. §§ 226.7, 512(a), 1198);**
- 5. **Failure To Provide Rest Breaks (Cal. Lab. Code §§ 226.7, 1198);**
- 6. **Failure To Reimburse For Business Expenses (Cal. Lab. Code §§ 2800 and 2802);**
- 7. **Failure To Provide And Maintain Itemized And Accurate Wage Statements (Cal. Lab. Code § 226(a), 1174(d), 1198);**

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- 8. Failure To Pay Vested Vacation Wages (Cal. Lab. Code § 227.3); and**
- 9. Unfair Competition (Cal. Bus. & Prof. Code § 17200, *Et Seq.*)**

DEMAND EXCEEDS \$25,000.00

Plaintiff Bernardo Buchsbaum (hereinafter “Plaintiff”) hereby brings this wage and hour Class Action against Defendant Digital Intelligence Systems, LLC, a Delaware limited liability company, Defendant T-Mobile USA, Inc., a Delaware corporation, and DOES 1 through 50 (collectively referred to as “Defendants”), individually and on behalf of all other similarly situated employees for damages and/or penalties for violations of the California Labor Code, including without limitation, failure to pay all minimum and overtime wages owed, failure to provide off-duty meal periods, failure to provide off-duty rest breaks, failure to reimburse business expenses, failure to pay vested vacation wages, and failure to provide accurate itemized wage statements, as follows:

INTRODUCTION

1. This class action is within the Court’s jurisdiction under California Labor Code §§ 201-204, 210, 226(a), 226.7, 227.3, 510, 512, 1182.12, 1194, 1197, 1197.1, 2802, the California Industrial Welfare Commission’s (“IWC”) Wage Orders, and the California Business and Professions Code § 17200, *et seq.*

2. Defendant Digital Intelligence Systems, LLC (hereafter “DISYS” or “Defendant DISYS”) provides temporary staffing and Information Technology (“IT”) consulting services to companies.

3. Defendant T-Mobile, USA Inc. (“T-Mobile” or “Defendant T-Mobile”) is a wireless network operator and wireless carrier.

4. Plaintiff was employed by Defendants as a Technical Recruiter or similar position.

5. Defendants failed to provide Plaintiff and other employees all their earned wages, in violation of, among others, Labor Code § 204, 210, 1194 and the applicable Wage

1 Order (as well as pay liquidated damages owed under Labor Code §1194.2). Plaintiff and other
2 employees were forced to work through portions or all of their meal periods off the clock as
3 well as and work through rest breaks.

4 6. Defendants employed Plaintiff and other employees for more than eight hours
5 per day and more than forty hours per workweek and failed to pay Plaintiff and other
6 employees overtime compensation for the overtime hours worked, in violation of Labor Code
7 §§ 201-203, 510 and 1198 and the applicable Wage Order. Plaintiff and other employees
8 worked overtime hours off-the-clock (including by working through meal periods as addressed
9 above) and were not compensated at all for these hours worked. Defendants failed to pay
10 Plaintiff and other employees overtime pay for work exceeding eight hours a day and only paid
11 overtime for work in excess of forty hours in a week.

12 7. Defendants employed Plaintiff and other employees for work periods of more
13 than five hours without a meal period of not less than thirty minutes and failed to compensate
14 Plaintiff and other employees for these missed meal periods, in violation of Labor Code §§
15 201-203, 226.7, 512(a), 1198 and the applicable Wage Order. Plaintiff and other employees'
16 lunch breaks were often less than thirty minutes. The meal periods were also regularly
17 interrupted, after the end of the fifth hour of their shifts, and/or on duty.

18 8. Defendants employed Plaintiff and other employees for work periods of four
19 hours or major fraction thereof without rest breaks of ten minutes' net rest time and failed to
20 compensate them for these missed rest periods, in violation of Labor Code §§ 201-203, 226.7,
21 1198 and the applicable Wage Order. On information and belief, Plaintiff and other employees
22 almost never received rest periods. On occasions when Plaintiff and other employees took
23 rest breaks, they were regularly untimely, interrupted, less than ten minutes, and/or on duty.

24 9. To perform their jobs, Plaintiff and other employees were required to make use
25 of their own home-internet connection and use a personal cellphone for business-related
26 purposes, including without limitation, to coordinate with customers and with other employees.
27 Defendants did not fully reimburse Plaintiff or the other Class Members for these business-
28 related expenses in violation of Labor Code § 2802.

1 10. Defendants knowingly and intentionally failed to provide Plaintiff and other
2 employees with timely and accurate wage and hour statements, in violation of Labor Code §§
3 226(a), 1174(d), 1198 and the applicable Wage Order including based on the above.

4 11. Defendants failed to provide Class Members their accrued unused vacation
5 wages upon cessation of employment in violation of Labor Code §§ 201-203 and 227.3.

6 12. On information and belief, Plaintiff alleges that Defendants applied the same
7 policies described above to all other members of the proposed Class. As alleged below, these
8 uniform policies, practices and procedures violated California’s labor laws and constituted
9 unfair, fraudulent or illegal business practices under Business & Professions Code § 17200
10 *et seq.*

11 **PARTIES, JURISDICTION AND VENUE**

12 13. Plaintiff is a former employee of Defendants. Plaintiff was employed by
13 Defendants as a Technical Recruiter or similar position from approximately August 2018 until
14 June 2019. During his employment with Defendants, Plaintiff was an hourly, non-exempt
15 employee.

16 14. Defendant DISYS is a corporation organized under the laws of the state of
17 Delaware. Defendant DISYS is headquartered in Santa Barbara, California. Defendant
18 DISYS provides temporary staffing and IT consulting services to companies.

19 15. Defendant T-Mobile is a corporation organized under the laws of the state of
20 Delaware. Defendant T-Mobile is headquartered in Glen Allen, Virginia. Defendant T-
21 Mobile is a wireless network operator and a wireless carrier.

22 16. Plaintiff is informed and believes, and based thereon alleges, that at all times
23 mentioned herein, Defendants and DOES 1 through 50 are and were business entities,
24 individuals, and partnerships, licensed to do business and actually doing business in the State
25 of California. As such, and based upon all the facts and circumstances incident to Defendants’
26 businesses, Defendants are subject to California Labor Code §§ 201-204, 210, 226(a), 226.7,
27 227.3, 510, 512, 1182.12, 1194, 1197, 1197.1, 2802, the California Industrial Welfare
28 Commission’s (“IWC”) Wage Orders, and the California Business and Professions Code §

1 17200, *et seq.*

2 17. Plaintiff does not know the true names or capacities of the Defendants sued
3 herein as DOES 1 through 25, inclusive, and, for that reason, said Defendants are sued under
4 such fictitious names. Plaintiff is informed and believe, and based thereon, alleges that each
5 of said fictitious Defendants are and were responsible in some manner for the injuries
6 complained of herein. Plaintiff will amend this Complaint to identify such fictitiously-named
7 Defendants pursuant to Code of Civil Procedure § 474 once their identities become known.

8 18. The relief sought by Plaintiff on behalf of himself and the Class defined below
9 exceeds the minimal jurisdictional limits of the Superior Court and will be established
10 according to proof at trial. The Court has personal jurisdiction over each of the parties because
11 they are either citizens of this State, doing business in this State or otherwise have minimum
12 contacts with this State.

13 19. Venue is proper in San Diego County because Plaintiff was employed by
14 Defendants in this County, and as a result, this dispute arose in this County.

15 20. Plaintiff is informed and believes and, based thereon, alleges that Defendants
16 were at all times relevant hereto members of, and engaged in, a joint venture, partnership,
17 association or common enterprise, and acting within the course and scope of, and in pursuance
18 of, said joint venture, partnership, association or common enterprise. Furthermore, Plaintiff
19 is informed and believe and, based thereon, alleges that at all times relevant hereto Defendants
20 conspired together in, aided and abetted, contributed to, and/or acted as agents or employees
21 of each other with respect to, the commission of the acts complained of herein. Defendants
22 are therefore jointly and severally liable for the injuries complained of herein.

23 **CLASS ALLEGATIONS**

24 21. Plaintiff brings this action pursuant to California Code of Civil Procedure §
25 382 on behalf of himself and the Class described below. The Class is comprised of and
26 defined as: All current and former non-exempt employees who worked for Defendant DISYS
27 within the State of California at any time during the period from four years preceding the
28 filing of this Complaint until final judgment (the “Class”).

1 22. Plaintiff proposes the following Subclasses:

2 a. All employees of Defendant DISYS whose employment ended (either
3 voluntarily or involuntarily) at any time since March 4, 2016, through the
4 present, and who has unused accrued vacation wages as of the last date
5 of their employment (the “Vacation Subclass”); and

6 b. All non-exempt employees of Defendant DISYS who were assigned to
7 work for Defendant T-Mobile at any time during March 4, 2016, through
8 the present (the “T-Mobile Subclass”).

9 23. Plaintiff reserves the right to establish further subclasses as appropriate.

10 24. There exists a well-defined community of interest among the Class, and the
11 Class is readily ascertainable. The identity of the members of the Class is readily ascertainable
12 by review of Defendants’ records, including payroll records. Plaintiff is informed and
13 believes, and based thereon alleges, that Defendants: (a) failed to pay all earned wages owed
14 in violation of Labor Code §§ 204 and 210; (b) failure to pay minimum and overtime wages,
15 in violation of §§ 201-204, 510, 558, 1194, 1197, and 1197.1; (c) failed to provide off-duty
16 meal periods, or provide premium compensation in lieu thereof; (d) failed to provide off-duty
17 rest breaks, or provide premium compensation in lieu thereof; (e) failed to reimburse for
18 business-related expenses, including without limitation, personal cellphone and home internet
19 expenses; (f) failed to provide accurate itemized wage statements in violation of Labor Code
20 § 226(a); (g) failed to pay unused vested vacation wages at the time of cessation of
21 employment in violation of Labor Code §§ 201-203 and 227.3; and (h) engaged in unfair
22 business practices in violation of the California Labor Code and the UCL.

23 25. The members of the Class are so numerous that joinder of all members in a
24 single action would not be feasible or practical, and the amount of individual damages is not
25 large enough to make individual lawsuits by each class member practical or feasible. Plaintiff
26 is informed and believes and based upon such information and belief alleges that there are in
27 excess of 100 members of the Class.

28 26. The named Plaintiff is fully prepared to take all necessary steps to represent

1 fairly and adequately the interests of the Class defined above. Plaintiff's attorneys are ready,
2 willing and able to fully and adequately represent the Class and the individual Plaintiff.
3 Plaintiff's attorneys have prosecuted and settled wage-and-hour class actions in the past and
4 currently have a number of wage-and-hour class actions pending in California state and
5 federal courts.

6 27. Plaintiff's claims are typical of the claims of the rest of the Class, and Plaintiff
7 will fairly and adequately represent the interests of the Class. For example, on information
8 and belief, Plaintiff was required to perform work off-the-clock during his meal periods and
9 was not compensated for this off-the-clock work, like other Class Members. Similarly, on
10 information and belief, Plaintiff was not compensated for his accrued and vested vacation time
11 when his employment with Defendants ended, like other Class Members. Also, on
12 information and belief, Plaintiff like other Class Members was subject to Defendants'
13 overtime policy which failed to pay Plaintiff and other employees overtime pay for work
14 exceeding eight hours a day and only paid overtime for work in excess of forty hours in a
15 week.

16 28. Common issues of fact and/or law predominate in this action over any
17 allegedly individual issues. Specifically, the following common questions of fact or law
18 predominate and make this action superior to individual actions:

19 (i) whether Plaintiff and the Class are entitled to recover damages,
20 penalties and other relief on the grounds that Defendants have used uniform policies and
21 procedures that have consistently violated California labor laws and regulations and caused
22 Plaintiff and the Class to suffer the same or similar injuries;

23 (ii) whether Defendants violated Labor Code §§ 204, 210, 1194 and the
24 applicable Wage Order by failing to pay wages for all hours worked;

25 (iii) whether Defendants violated Labor Code §§ 201-203, 510, 1198,
26 and the applicable Wage Order by failing to pay overtime compensation;

27 (iv) whether Defendants violated Labor Code §§ 201-203, 226.7,
28 512(a), 1198, and the applicable Wage Order by failing to provide a compliant meal period

1 of at least thirty minutes when the shift exceeded five hours worked, and not compensating
2 employees with one hour of pay at the employees' regular rate of compensation for each
3 workday that the meal period was not provided;

4 (v) whether Defendants violated Labor Code § 201-203, 226.7 and the
5 applicable Wage Order by failing to provide daily compliant rest breaks of ten minutes per
6 four hours or major fraction thereof worked when the shift exceeded three-and-a half hours
7 and by failing to compensate employees one hour's wages in lieu of rest periods;

8 (vi) whether Defendants violated Labor Code § 226(a), 1174(d), 1198,
9 and the applicable Wage Order by failing to provide and maintain timely and accurate
10 itemized wage statements;

11 (vii) whether Defendants failed to indemnify the Class for all of the
12 necessary expenditures or losses incurred in direct consequence of the discharge of their
13 duties, or of their obedience to the directions of their employer, in violation of Labor Code
14 Section 2802;

15 (viii) whether Defendants' practices constitute unfair, fraudulent, or illegal
16 business practices under Business and Professions Code Sections 17200 *et seq.*

17 29. California labor laws under which Plaintiff asserts the following causes of
18 action on behalf of himself and the rest of the Class are broadly remedial in nature. These
19 labor laws serve an important public interest in establishing minimum working conditions and
20 standards in California. They furthermore protect employees from exploitation by employers
21 who may seek to take advantage of their superior economic and bargaining power in setting
22 onerous terms and conditions of employment. The class action mechanism is a particularly
23 efficient and appropriate procedure to redress the injuries alleged herein. If each employee in
24 the Class was required to file an individual action, Defendants would be able to use their
25 superior financial and legal resources to gain an unfair advantage over each individual class
26 member. Moreover, requiring each Class member to pursue an individual action would also
27 discourage the assertion of meritorious causes of action by employees who would likely be
28 disinclined to file such individual actions due to a justifiable fear of retaliation and damage to

1 their careers at subsequent employment.

2 30. In addition, even if feasible, individual actions by each Class member would
3 create a substantial risk (i) of inconsistent or varying adjudications with respect to the claims
4 of each Class member against Defendants, that in turn could establish potentially incompatible
5 standards of conduct for Defendants, and/or (ii) of adjudications with respect to individual
6 Class Members that would, as a practical matter, be dispositive of the interests of the other
7 Class Members. Furthermore, the claims of each individual Class member are not sufficiently
8 large enough to make it economically feasible to bring each Class member's claims on an
9 individual basis.

10 **FIRST CAUSE OF ACTION**

11 **FAILURE TO PAY EARNED WAGES**

12 **BY PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS**

13 **(Cal. Labor Code §§ 204, 210)**

14 31. Plaintiff re-alleges and incorporates herein by this reference each of the
15 allegations set forth above.

16 32. Defendants failed to pay Class Members all of their earned wages, as required
17 by the Labor Code and the applicable Wage Order. Specifically, Defendants deprived Class
18 Members of their rightfully earned wages by not paying Class Members for work performed
19 off-the-clock, including by working through meal breaks, and as a result did not pay Class
20 Members for all hours worked. Defendants also failed to pay Plaintiff and Class Members
21 overtime pay for work exceeding eight hours a day and only paid overtime for work in excess
22 of forty hours in a week. Finally, Defendants also failed to pay Plaintiff and Class Members
23 their wages for unused and vested vacation pay at the cessation of their employment.

24 33. Class Members have been deprived of their rightfully earned wages as a direct
25 and proximate result of Defendants' failure to pay said compensation. Class Members are
26 entitled to recover such amounts, plus interest thereon, attorney's fees and costs.

27 34. In addition, Class Members are entitled to penalties pursuant to Labor Code
28 section 210 as follows: (1) for Defendants' initial violation, \$100 for each failure to pay each

1 Class Member and (2) for each of Defendants' subsequent violations, or any willful or
2 intentional violation, \$200 for each failure to pay each Class Member, plus 25 percent of the
3 amount unlawfully held.

4 **SECOND CAUSE OF ACTION**

5 **FAILURE TO PAY MINIMUM WAGES**

6 **BY PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS**

7 **(Cal. Labor Code §§ 10, 1182.12, 1194, 1197, 1197.1, 1198)**

8 35. Plaintiffs allege and incorporate herein by this reference each and every
9 allegation set forth in all previous paragraphs of the Complaint.

10 36. The Labor Code and the applicable Wage Order provide that in the State of
11 California an employer of over 25 employees must pay a minimum wage to an employee,
12 which is nine dollars (\$9.00) per hour for all hours worked prior to January 1, 2016, ten dollars
13 (\$10.00) per hour for all hours worked effective January 1, 2016, ten dollars and fifty cents
14 (\$10.50) per hour for all works worked effective January 1, 2017, eleven dollars (\$11.00) per
15 hour for all hours worked effective January 1, 2018, and twelve dollars (\$12.00) per hour for
16 all hours worked effective January 1, 2019.

17 37. Defendants deprived Class Members of their rightfully earned minimum wage
18 compensation as a direct and proximate result of Defendants' failure to pay said
19 compensation. Under Labor Code § 1194, Class Members are entitled to recover such
20 amounts, plus interest thereon, reasonable attorney's fees, and costs.

21 38. In addition, under Labor Code § 1194.2, Class Members are entitled to recover
22 liquidated damages in an amount equal to the minimum wages unlawfully unpaid, and interest
23 thereon.

24 39. Plaintiff is informed and believes and based thereon alleges that Defendants
25 willfully failed to pay Plaintiff and the Class all wages due and owing to them. Plaintiff is
26 informed and believes and based thereon alleges that Defendants' willful and intentional
27 failure to provide all wages due and owing to Class Members resulted in continued payment
28 of wages up to thirty (30) days from the time the wages are due. Therefore, all member of the

1 Class who have separated from employment are entitled to compensation as per Labor Code
2 § 203.

3 **THIRD CAUSE OF ACTION**

4 **FAILURE TO PAY OVERTIME COMPENSATION**

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

6 **(Cal. Labor Code §§ 510, 1198)**

7 40. Plaintiff re-alleges and incorporates herein by this reference each and every
8 allegation set forth in all previous paragraphs of the Complaint.

9 41. Defendants employed Class Members for more than eight hours per day and
10 more than forty hours per workweek, but Defendants failed to pay them the overtime
11 compensation and pay it at the correct rate as required by the Labor Code and the applicable
12 Wage Order. Specifically, Defendants deprived Class Members of their rightfully earned
13 overtime wages by not paying Class Members for work performed off -the-clock, including
14 by working through meal breaks, and by failing to pay Plaintiff and Class Members overtime
15 pay for work exceeding eight hours a day and only paid overtime for work in excess of forty
16 hours in a week.

17 42. Defendants thus required Class Members to work for longer hours than those
18 fixed, or under conditions prohibited, by order of the IWC and the Labor Code, in violation
19 of those orders and did not pay them properly for such time.

20 43. Defendants deprived Class Members of their rightfully earned overtime
21 compensation as a direct and proximate result of Defendants' failure to pay said compensation.
22 Under Code Labor Code § 1194, Class Members are entitled to recover such amounts, plus
23 interest thereon, attorney's fees, and costs.

24 44. Plaintiff is informed and believes and based thereon alleges that Defendants
25 willfully failed to pay Plaintiff and the Class all overtime wages due and owing to them.
26 Plaintiff is informed and believes and based thereon alleges that Defendants' willful and
27 intentional failure to provide all overtime wages due and owing to Class Members resulted in
28 continued payment of wages up to thirty (30) days from the time the wages are due. Therefore,

1 all member of the Class who have separated from employment are entitled to compensation
2 as per Labor Code § 203.

3 **FOURTH CAUSE OF ACTION**

4 **FAILURE TO PROVIDE MEAL BREAKS**

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

6 **(Cal. Labor Code §§ 226.7, 512(a), 1198)**

7 45. Plaintiff re-alleges and incorporates herein by this reference each and every
8 allegation set forth in all previous paragraphs of the Complaint.

9 46. The Labor Code and the applicable Wage Order provide that an employee is
10 entitled to an uninterrupted, off-the-clock meal period of not less than thirty minutes for every
11 five hours worked. The Labor Code and the applicable Wage Order also require the employer
12 to pay the employee one hour at the employee's regular rate of compensation for each day
13 that the employer does not provide at least one required meal period.

14 47. Defendants employed Class Members for work periods of more than five hours
15 without a compliant meal period of not less than thirty minutes and failed to compensate them
16 for such meal periods, as required by Labor Code § 226.7 and the applicable Wage Order.
17 Specifically, Defendants routinely failed to provide Plaintiff and Class Members with a
18 compliant meal period of not less than thirty minutes, and instead, required Plaintiff and Class
19 Members to perform off-the-clock work during their meal periods.

20 48. Defendants deprived Class Members of their rightfully earned compensation
21 for meal periods as a direct and proximate result of Defendants' failure to pay said
22 compensation.

23 49. The remedy provided for in Labor Code § 226.7 constitutes a wage, and Class
24 Members are entitled to interest thereon. (Murphy v. Kenneth Cole Productions, Inc. (2007)
25 40 Cal.4th 1094, 1099-1100.)

26 50. Plaintiff is informed and believes and based thereon alleges that Defendants
27 willfully failed to pay Plaintiff and the Class meal period premiums due and owing to them.
28 Plaintiff is informed and believes and based thereon alleges that Defendants' willful and

1 intentional failure to provide meal period premiums due and owing to Class Members resulted
2 in continued payment of wages up to thirty (30) days from the time such wages are due.
3 Therefore, all member of the Class who have separated from employment are entitled to
4 compensation as per Labor Code § 203.

5 **FIFTH CAUSE OF ACTION**

6 **FAILURE TO PROVIDE REST BREAKS**

7 **BY PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS**

8 **(Cal. Labor Code §§ 226.7, 1198)**

9 51. Plaintiff re-alleges and incorporates herein by this reference each and every
10 allegation set forth in all previous paragraphs of the Complaint.

11 52. The Labor Code and the applicable Wage Order provide that an employee is
12 entitled to an uninterrupted rest break of not less than ten minutes for every four hours worked
13 or major fraction thereof. The Labor Code and the applicable Wage Order require the
14 employer to pay the employee one hour at the employee's regular rate of compensation for
15 each day that the employer does not provide at least one required rest break.

16 53. Defendants employed Class Members for work periods of four hours or major
17 fraction thereof without complaint rest breaks of ten minutes and failed to compensate them
18 for such rest breaks, as required by Labor Code § 226.7 and the applicable Wage Order.
19 Specifically, Defendants would require Class Members to continue working during their rest
20 breaks, or otherwise, not provide rest breaks to Class Members.

21 54. Defendants deprived Class Members of their rightfully earned compensation
22 for rest periods as a direct and proximate result of Defendants' failure to pay said
23 compensation.

24 55. The remedy provided for in Labor Code § 226.7 constitutes a wage, and Class
25 Members are entitled to interest thereon. (Murphy v. Kenneth Cole Productions, Inc. (2007)
26 40 Cal.4th 1094, 1099-1100.)

27 56. Plaintiff is informed and believes and based thereon alleges that Defendants
28 willfully failed to pay Plaintiff and the Class rest period premiums due and owing to them.

1 Plaintiff is informed and believes and based thereon alleges that Defendants’ willful and
2 intentional failure to provide rest period premiums due and owing to Class Members resulted
3 in continued payment of wages up to thirty (30) days from the time such wages are due.
4 Therefore, all member of the Class who have separated from employment are entitled to
5 compensation as per Labor Code § 203.

6 **SIXTH CAUSE OF ACTION**

7 **FAILURE TO REIMBURSE FOR BUSINESS EXPENSES**

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

9 **(Cal. Labor Code §§ 221, 224, 1198, & 2802)**

10 57. Plaintiff re-alleges and incorporates herein by this reference each and every
11 allegation set forth in all previous paragraphs of the Complaint as if fully set forth herein.

12 58. Defendants have violated or caused to be violated Labor Code §§ 221, 224 and
13 2802, as well as the applicable Wage Order, in that Plaintiff and the Class Members were
14 required to purchase and maintain company-required items that were necessary and/or
15 required to perform their job. Specifically, Plaintiff and Class Members were required to use
16 their personal cellphones and home internet for business-related purposes, including without
17 limitation, to coordinate with clients and other employees.

18 59. Plaintiff and the Class Members have been injured by Defendants’ actions and
19 are entitled to be reimbursed for all expenses incurred in the course of their employment, as
20 well as attorney’s fees and costs, according to proof at the time of trial.

21 **SEVENTH CAUSE OF ACTION**

22 **FAILURE TO PROVIDE AND MAINTAIN**

23 **ACCURATE AND ITEMIZED WAGE STATEMENTS**

24 **BY PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS**

25 **(Cal. Labor Code § 226(a), 1174(d), 1198)**

26 60. Plaintiff re-alleges and incorporates herein by this reference each and every
27 allegation set forth in all previous paragraphs of the Complaint.

28 61. Labor Code § 226(a) required Defendants, “semimonthly or at the time of each

1 payment of wages,” to furnish their workers with “an accurate itemized statement in writing”
2 showing gross and net wages earned, total hours worked by the employee, rates of pay, and
3 other information. As a result of the Labor Code violations alleged above, Defendants have
4 failed to provide wage statements that accurately identify the information required under
5 Labor Code § 226(a), including without limitation, the gross wages earned, net wages earned,
6 total hours worked, and hourly rates of pay. Defendants knowingly and intentionally failed
7 to provide their workers with such timely and accurate wage and hour statements.

8 62. Plaintiff and Class Members suffered “injury” within meaning of Labor Code
9 § 226(e) as a result of Defendants’ knowing and intentional failure to provide their workers
10 with accurate itemized wage statements as required by law.

11 63. Under Labor Code § 226(e), and based on Defendants’ conduct as alleged
12 herein, Class Members are entitled to (a) fifty dollars (\$50) for the initial pay period in which
13 a wage and hour statement violation occurred, and one hundred dollars (\$100) per employee
14 for each violation in a subsequent pay period, not exceeding an aggregate penalty of four
15 thousand dollars (\$4,000); (b) injunctive relief to ensure Defendants’ compliance with Labor
16 Code § 226; and (c) an award of costs and reasonable attorney's fees.

17 64. Moreover, as a result of Defendants’ conduct, Class Members have suffered
18 actual damages in that, among other things, the lack of accurate wage statements hindered
19 Class Members from determining the correct amount of wages owed to them. The absence of
20 accurate wage statements has caused Class Members time, money, and energy in attempting
21 to reconstruct time and pay records and resulted in the submission by Defendants of inaccurate
22 information about wages and deductions. As a result of Defendants’ failure to provide Class
23 Members with timely and accurate wage statements, Class Members are entitled to recover
24 the aggregate sum according to proof, of all actual damages they suffered.

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EIGHTH CAUSE OF ACTION

FAILURE TO PAY UNUSED VESTED VACATION WAGES

BY PLAINTIFF AND THE VACATION SUBCLASS AGAINST ALL DEFENDANTS

(Cal. Lab. Code §§ 227.3)

65. Plaintiff re-alleges and incorporate herein by this reference each of the allegations set forth above.

66. California Labor Code § 227.3 provides that where an employee is terminated without having taken off his or her vested vacation time, all vested vacation shall be paid to said employee as wages at the final rate of pay upon termination.

67. Specifically, Plaintiff and Vacation Subclass members accrued vacation time during their employment with Defendants. Plaintiff and Vacation Subclass members did not use all vested vacation time during their employment, and thus have unused vested vacation wages. However, upon the cessation of their employment, Defendants failed to pay Plaintiff and Vacation Subclass members their unused accrued vacation wages. Such conduct is a violation of Labor Code § 227.3.

68. During the Class period, Labor Code Section 203 provides that, if an employer such as Defendants fails to pay any of the wages owed to an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced, but the wages shall not continue for more than thirty (30) days.

69. Accordingly, Plaintiff and the members of the Class who were discharged or who quit during the Class period are entitled to receive their earned and unused vacation wages, plus for each day they were not paid their vacation wages upon the last day of employment, up to a maximum of thirty (30) days, plus interest, costs and reasonable attorneys' fees.

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NINTH CAUSE OF ACTION

UNFAIR COMPETITION AGAINST ALL DEFENDANTS

(California Business & Professions Code § 17200, *et seq.*)

70. Plaintiff re-alleges and incorporates herein by this reference each and every allegation set forth in all previous paragraphs of the Complaint.

71. Defendants' violations of the Labor Code and the applicable Wage Order constitute unfair business practices in violation of Business & Professions Code § 17200, *et seq.*

72. Defendants engaged and continues to engage in unfair and unlawful business practices in California by practicing, employing, and utilizing the employment practices outlined above, inclusive, to wit, by: (a) failing to pay all earned minimum and overtime wages owed; (b) failing to provide off-duty meal periods, or provide premium compensation in lieu thereof; (d) failing to provide off-duty rest breaks, or provide premium compensation in lieu thereof; (e) failing to reimburse for business-related expenses, including without limitation, personal cellphone and home internet expenses; and (f) failing to pay unused vested vacation wages at the time of cessation of employment.

73. Defendants' utilization of such unfair and unlawful business practices constitutes unfair, unlawful competition and provides an unfair advantage over Defendants' competitors.

74. Plaintiff seeks, on behalf of himself and other similarly situated members of the Class, full restitution of monies, as necessary and according to proof, to restore any and all monies withheld, acquired and/or converted by the Defendants by means of the unfair practices complained of herein. Plaintiff and the Class is entitled to immediate possession of all amounts owed, with interest.

75. Plaintiff is informed and believes, and on that basis alleges, that at all times herein mentioned Defendants have engaged in unlawful, deceptive and unfair business practices, as proscribed by California Business and Professions Code § 17200, *et seq.*, including those set forth herein above thereby depriving Plaintiff and other members of the

1 Class the minimum working condition standards and conditions due to them under the
2 California laws as specifically described therein.

3 **PRAYER**

4 WHEREFORE, Plaintiff prays for judgment on behalf of himself and the Class against
5 all Defendants, as follows:

6 **ON THE FIRST CAUSE OF ACTION**

- 7 1. For all unpaid earned wages and penalties;
- 8 2. For all actual, consequential, and incidental losses and damages, according to
9 proof;
- 10 3. For prejudgment interest; and
- 11 4. For reasonable attorneys’ fees and costs under Labor Code § 218.5.

12 **ON THE SECOND CAUSE OF ACTION**

- 13 1. For all underpaid wages;
- 14 2. For liquidated damages pursuant to Labor Code § 1194(a); and
- 15 3. For prejudgment interest;
- 16 4. For reasonable attorneys’ fees and costs under Labor Code § 1194.

17 **ON THE THIRD CAUSE OF ACTION**

- 18 1. For unpaid overtime wages and penalties;
- 19 2. For prejudgment interest; and
- 20 3. For reasonable attorneys’ fees and costs under Labor Code § 1194.

21 **ON THE FOURTH CAUSE OF ACTION**

- 22 1. For unpaid wage premiums for failing to provide compliant meal periods and
23 penalties;
- 24 2. For prejudgment interest; and
- 25 3. For reasonable attorneys’ fees and costs under Labor Code § 218.5.

26 **ON THE FIFTH CAUSE OF ACTION**

- 27 1. For unpaid wage premiums for failing to provide compliant rest periods and
28 penalties;

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- 2. For prejudgment interest; and
- 3. For reasonable attorneys’ fees and costs under Labor Code § 218.5.

ON THE SIXTH CAUSE OF ACTION

- 1. For the unreimbursed expenses incurred by Plaintiffs and the Class;
- 2. For prejudgment interest; and
- 3. For reasonable attorneys’ fees and costs under Labor Code § 2802.

ON THE SEVENTH CAUSE OF ACTION

- 1. For damages and penalties under Labor Code § 226(e);
- 2. For reasonable attorneys' fees and costs under Labor Code § 226(e).

ON THE EIGHTH CAUSE OF ACTION

- 1. For the unpaid vacation wages and the maximum penalties;
- 2. For prejudgment interest; and
- 3. For reasonable attorneys’ fees and costs.

ON THE NINTH CAUSE OF ACTION

- 1. For restitution of all unpaid wages, overtime and other monies withheld from Plaintiffs and the rest of the Class as a result of Defendants’ unfair, unlawful or fraudulent business practices; and
- 2. For reasonable attorneys’ fees and costs under Code of Civil Procedure § 1021.5.

ON ALL CAUSES OF ACTION

- 1. For certification of the action as a class action;
- 2. For attorneys appearing on the above caption to be named class counsel and for named Plaintiff to be appointed class representative;
- 3. A declaratory judgment that the practices complained of in this Complaint are unlawful under California Law;
- 4. For reasonable attorneys’ fees under the California Labor Code and all related statutes, including California Code of Civil Procedure § 1021
- 5. For costs of the suit incurred herein;

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6. For such further relief as the Court may deem appropriate.

DATED: March 4, 2020

**Lebe Law, APLC and Diversity Law Group,
APC**

By: 

Jonathan M. Lebe

Larry W. Lee

Attorney for Plaintiff and the Class

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Former Digital Intelligence Systems, T-Mobile Worker Files Lawsuit Alleging California Labor Law Violations](#)
