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11  
12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
13 **FOR THE COUNTY OF SANTA CLARA**

14 **18CV323955**

15 DARYL JIMENEZ, JEREMY JIMENEZ,  
and ABEL ARRIOLA, as individuals, on  
16 behalf of themselves, and all persons  
similarly situated,

17 Plaintiff,

18 v.

19  
20 CALIFORNIA WIRELESS  
SOLUTIONS, INC., d.b.a. SPRINT, a  
21 California corporation authorized to do  
business in the state of California; ZAID  
22 HAMED, an individual; ALEA  
FERGUSON, an individual; SPRINT  
23 SOLUTIONS, INC., a Virginia  
corporation authorized to do business in  
24 the state of California; SPRINT  
COMMUNICATIONS COMPANY L.P.  
25 a Virginia limited partnership; and DOES  
1 to 10 inclusive,

26 Defendant.

CASE NO. \_\_\_\_\_

**CLASS & REPRESENTATIVE ACTION**

**COMPLAINT FOR DAMAGES, CIVIL  
PENALTIES, RESTITUTION AND  
INJUNCTIVE RELIEF:**

- 27 (1) **FAILURE TO PAY MINIMUM  
WAGES AND OVERTIME  
COMPENSATION**  
(Labor Code §§ 204, 510, 1194, 1197,  
1197.1, and 1198);
- 28 (2) **FAILURE TO PROVIDE WRITTEN  
COMMISSION AGREEMENTS**  
(Labor Code § 2751);
- (3) **UNLAWFUL DEDUCTION OF  
WAGES**  
(Labor Code § 221 and 224);
- (4) **SECRETLY UNDERPAID WAGES**  
(Labor Code § 223);
- (5) **FAILURE TO PROVIDE LEGALLY  
COMPLIANT MEAL PERIODS OR**

**COMPENSATION IN LIEU  
THEREOF  
(Labor Code §§ 226.7 and 512);**

**(6) FAILURE TO PROVIDE LEGALLY  
COMPLIANT REST PERIODS OR  
COMPENSATION IN LIEU  
THEREOF  
(Labor Code § 226.7);**

**(7) FAILURE TO REIMBURSE FOR  
NECESSARY WORK EXPENSES  
(Labor Code §§ 2800 and 2802);**

**(8) FAILURE TO PAY WAGES OWED  
(Labor Code §§ 201, 202, and 203);**

**(9) FAILURE TO FURNISH  
ACCURATE WAGE STATEMENTS  
(Labor Code §§ 226 and 226.3);**

**(10) FAILURE TO MAINTAIN  
ACCURATE RECORDS  
(Labor Code §§ 226 and 1174);**

**(11) UNFAIR BUSINESS PRACTICES  
(Bus. & Prof. Code §§ 17200 *et seq.*);**

**(12) PRIVATE ATTORNEYS GENERAL  
ACT OF 2004  
(Labor Code §§ 2698 *et seq.*).**

**DEMAND FOR JURY TRIAL**

Plaintiffs Daryl L. Jimenez, Jeremy Jimenez, and Abel Arriola (“Plaintiffs”), by and through their attorneys of record, bring this action on behalf of themselves and all persons similarly situated against Defendants California Wireless Solutions, Inc., Zaid Hamed, Alea Ferguson, Sprint Solutions, Inc. and Sprint Communications Company L.P. (collectively “Sprint” or “Defendants”) on the following grounds:

**INTRODUCTION**

1. This action is brought by Plaintiffs on behalf of themselves and all other current or former hourly non-exempt retail employees of Sprint who held titles including but not limited to sales representative, sales lead, and store manager who were not properly compensated for all hours worked, who were not provided with written commission

1 agreements, who were subject to the unlawful deduction of earned wages and underpayment of  
2 wages, who were not provided with legally compliant meal and rest periods or compensation in  
3 lieu thereof, who were not reimbursed for necessary work expenses, who were not paid all  
4 wages due upon separation or termination of the employment relationship, who were provided  
5 with inaccurate wage statements, whose information was not properly maintained by Sprint  
6 and who were subjected to Sprint’s unlawful, unfair, and fraudulent business practices.

7 2. Plaintiffs seek damages, civil penalties, injunctive relief, and restitution, as well  
8 as reasonable attorneys’ fees and litigation costs, as provided under California law.

9 3. All allegations in this Complaint are based upon information and belief, except  
10 those allegations pertaining to Plaintiffs named herein and their counsel, which are based upon  
11 personal knowledge. Each allegation in this Complaint has evidentiary support or is likely to  
12 have evidentiary support after a reasonable opportunity for further investigation and discovery.

13 **JURISDICTION AND VENUE**

14 4. This Court has jurisdiction over this action pursuant to California Code of Civil  
15 Procedure (“Code of Civil Procedure”) section 410.10. Pursuant to Code of Civil Procedure  
16 section 382, California Business and Professions Code (“Bus. & Prof. Code”) section 17203,  
17 and California Labor Code (“Labor Code”) section 2698 *et seq.*, Plaintiffs bring this action on  
18 behalf of themselves, and on behalf of all persons similarly situated, as defined herein.

19 5. This Court has personal jurisdiction over Defendants because Defendants  
20 conduct business in the state of California and have caused injuries in the county of Santa  
21 Clara, as well as throughout the state of California, through their acts and omissions, and by  
22 their violations of the Labor Code and Bus. & Prof. Code.

23 6. Venue as to Defendants is proper in this judicial district pursuant to Code of  
24 Civil Procedure section 395(a). Defendants California Wireless Solutions, Inc., d.b.a. Sprint,  
25 Sprint Solutions, Inc. and Sprint Communications Company, L.P. transact business in Santa  
26 Clara County and are otherwise within this Court’s jurisdiction for purposes of service of  
27 process. Defendants Zaid Hamed and Alea Ferguson reside in Santa Clara County. The  
28 unlawful acts alleged herein have a direct effect on Plaintiffs and those similarly situated

1 within the county of Santa Clara, the counties surrounding Santa Clara County and throughout  
2 the state of California.

3 7. Pursuant to Rule 3.400 of the California Rules of Court, this case shall be  
4 deemed a complex action because it is filed as a class and representative action and involves  
5 specialized case management, extensive discovery and evidence, difficult and/or novel issues  
6 and is likely to require extensive post judgment supervision.

7 **CLASS DEFINITION**

8 8. The proposed classes defined below consist of current or former non-exempt  
9 retail employees employed by Sprint who held titles including but not limited to sales  
10 representative, sales lead and store manager in the state of California at any time during the  
11 period commencing on the date that is within four years prior to the filing of this Complaint  
12 through the present date (hereinafter the “Class Period”). The Class Period should be adjusted  
13 accordingly to the extent that equitable tolling operates to toll the claims by the classes against  
14 Defendants.

- 15 a. All current or former non-exempt retail employees employed by  
16 Defendants in the state of California who suffered any violations of the  
17 Labor Code, Business and Professions Code and/or the relevant  
18 California Industrial Welfare Commission’s (“IWC”) Wage Orders  
19 during the Class Period.
- 20 b. All current or former non-exempt retail employees employed by  
21 Defendants in the state of California who were not appropriately paid  
22 for all hours worked in violation of California law during the Class  
23 Period.
- 24 c. All current or former non-exempt retail employees employed by  
25 Defendants in the state of California who were not provided with  
26 written contracts outlining the computation and payment of  
27 commissions in violation of California law during the Class Period.

- 1 d. All current or former non-exempt retail employees employed by  
2 Defendants in the state of California who were subject to deductions  
3 from earned commissions in violation of California law during the  
4 Class Period.
- 5 e. All current or former non-exempt retail employees employed by  
6 Defendants in the state of California who were not provided with  
7 legally compliant meal periods or compensation in lieu thereof in  
8 violation of California law during the Class Period.
- 9 f. All current or former non-exempt retail employees employed by  
10 Defendants in the state of California who were not provided with  
11 legally compliant rest periods or compensation in lieu thereof in  
12 violation of California law during the Class Period.
- 13 g. All current or former non-exempt retail employees employed by  
14 Defendants in the state of California who were not reimbursed for  
15 necessary work expenses in violation of California law during the  
16 Class Period.
- 17 h. All former non-exempt retail employees employed by Defendants in  
18 the state of California who were not paid all wages due upon  
19 separation or termination of the employment relationship in violation  
20 of California law during the Class Period.
- 21 i. All current or former non-exempt retail employees employed by  
22 Defendants in the state of California who were not provided with  
23 accurate itemized wage statements in violation of California law  
24 during the Class Period.
- 25 j. All current or former non-exempt retail employees employed by  
26 Defendants in the state of California whose information was not  
27 accurately recorded and/or maintained in violation of California law  
28 during the Class Period.

1 k. All current or former non-exempt retail employees employed by  
2 Defendants in the state of California who were subject to Defendants'  
3 unlawful, unfair, and/or fraudulent business practices in violation of  
4 California law during the Class Period.

5 9. Members of the class and/or classes are all "employees" as the term is used in the  
6 Labor Code and the IWC Wage Orders regulating wages, hours and working conditions in the  
7 state of California.

8 10. A more precise definition of the class and/or classes may be determined after  
9 further investigation and discovery. Plaintiffs reserve their right to redefine the class and/or  
10 classes at any time prior to the court's order on Plaintiffs' Motion for Class Certification as  
11 provided by law.

12 **THE PARTIES**

13 **I. PLAINTIFFS**

14 11. Plaintiff Daryl Jimenez at all material times mentioned herein:

- 15 a. Was employed by Sprint from approximately December 2014 to June  
16 2017 as a non-exempt sales representative, sales lead, and store manager  
17 (in training).  
18 b. Worked at multiple Sprint locations in the Bay Area of California;  
19 c. Was paid an hourly wage, plus sales commissions;  
20 d. Regularly worked more than eight (8) hours per shift and/or forty (40)  
21 hours per week;  
22 e. Was required by Sprint to clock in and out through a faulty timekeeping  
23 system;  
24 f. Was instructed to work off the clock to achieve the maximum number of  
25 sales;  
26 g. Was required to check and respond to messages using the "GroupMe"  
27 application outside of scheduled work hours;  
28 h. Was not paid for all time working off the clock;

- 1 i. Was not paid the appropriate overtime rate;
- 2 j. Was not provided with a written contract outlining the calculation and
- 3 payment of commissions for each position she held;
- 4 k. Was subject to deductions from earned commissions;
- 5 l. Was not provided with legally compliant meal periods or compensation in
- 6 lieu thereof;
- 7 m. Was not provided with legally compliant rest periods or compensation in
- 8 lieu thereof;
- 9 n. Was not reimbursed for necessary work expenses;
- 10 o. Was not paid all wages due upon separation or termination of the
- 11 employment relationship;
- 12 p. Was not provided with accurate and itemized wage statements;
- 13 q. Believes her payroll records were not accurately maintained by Sprint;
- 14 r. Was subject to Sprint's unlawful, unfair and fraudulent business practices;
- 15 s. Is a member of the class and/or classes described above;
- 16 t. Is an "aggrieved employee" as defined by Labor Code § 2699(c);
- 17 u. Complied with all requirements outlined in Labor Code §§ 2698 *et seq.*
- 18 12. Plaintiff Jeremy Jimenez at all material times mentioned herein:
- 19 a. Was employed by Sprint from approximately December 2014 to June
- 20 2015 as a non-exempt sales representative.
- 21 b. Worked at a Sprint location in Tracy, California;
- 22 c. Was paid an hourly wage, plus sales commissions;
- 23 d. Regularly worked more than eight (8) hours per shift and/or forty (40)
- 24 hours per week;
- 25 e. Was required by Sprint to clock in and out through a faulty timekeeping
- 26 system;
- 27 f. Was instructed to work off the clock to achieve the maximum number of
- 28 sales;

- 1 g. Was required to check and respond to messages using the “GroupMe”
- 2 application outside of scheduled work hours;
- 3 h. Was not paid for all time working off the clock;
- 4 i. Was not paid the appropriate overtime rate;
- 5 j. Was not provided with a written contract outlining the calculation and
- 6 payment of commissions for her position;
- 7 k. Was subject to deductions from earned commissions;
- 8 l. Was not provided with legally compliant meal periods or compensation in
- 9 lieu thereof;
- 10 m. Was not provided with legally compliant rest periods or compensation in
- 11 lieu thereof;
- 12 n. Was not reimbursed for necessary work expenses;
- 13 o. Was not paid all wages due upon separation or termination of the
- 14 employment relationship;
- 15 p. Was not provided with accurate and itemized wage statements;
- 16 q. Believes her payroll records were not accurately maintained by Sprint;
- 17 r. Was subject to Sprint’s unlawful, unfair and fraudulent business practices;
- 18 s. Is a member of the class and/or classes described above.

19 13. Plaintiff Abel Arriola at all material times mentioned herein:

- 20 a. Was employed by Sprint from approximately September 2016 to February
- 21 2017 as a non-exempt sales representative;
- 22 b. Worked at a Sprint location in Concord, California;
- 23 c. Was paid an hourly wage, plus sales commissions;
- 24 d. Regularly worked more than eight (8) hours per shift and/or forty (40)
- 25 hours per week;
- 26 e. Was required by Sprint to clock in and out through a faulty timekeeping
- 27 system;
- 28



- 1 f. Was instructed to work off the clock to achieve the maximum number of
- 2 sales;
- 3 g. Was required to check and respond to messages using the “GroupMe”
- 4 application outside of scheduled work hours;
- 5 h. Was not paid for all time working off the clock;
- 6 i. Was not paid the appropriate overtime rate;
- 7 j. Was not provided with a written contract outlining the calculation and
- 8 payment of commissions for his position;
- 9 k. Was subject to deductions from earned commissions;
- 10 l. Was not provided with legally compliant meal periods or compensation in
- 11 lieu thereof;
- 12 m. Was not provided with legally compliant rest periods or compensation in
- 13 lieu thereof;
- 14 n. Was not reimbursed for necessary work expenses;
- 15 o. Was not paid all wages due upon separation or termination of the
- 16 employment relationship;
- 17 p. Was not provided with accurate and itemized wage statements;
- 18 q. Believes his payroll records were not accurately maintained by Sprint;
- 19 r. Was subject to Sprint’s unlawful, unfair and fraudulent business practices;
- 20 s. Is a member of the class and/or classes described above;
- 21 t. Is an “aggrieved employee” as defined by Labor Code § 2699(c);
- 22 u. Complied with all requirements outlined in Labor Code §§ 2698 *et seq.*

23 **II. DEFENDANTS**

24 1. Defendant California Wireless Solutions, Inc., d.b.a. Sprint (“California  
25 Wireless”), is a California corporation authorized to do business, and actually doing business,  
26 in the state of California. Defendant Zaid Hamed established California Wireless in 2007 in the  
27 San Jose area of California. Defendant Alea Ferguson is the current President for California  
28

1 Wireless. California Wireless is a Sprint Authorized Retailer store for Sprint phones, plans and  
2 customer support.

3       2. Defendant Sprint Solutions, Inc. is a Virginia corporation authorized to do, and  
4 actually doing business, in the state of California. Sprint Solutions, Inc. operates as a  
5 subsidiary of Sprint Nextel Corp. and provides voice, internet protocol, wireless, satellite and  
6 internet protocol-centric services.

7       3. Defendant Sprint Communications Company, L.P. is a limited partnership  
8 authorized to do business, and actually doing business, in the state of California. Through its  
9 subsidiaries, Sprint Communications Company, L.P. provides long distance  
10 telecommunication services. Sprint Communications Company, L.P. operates as a subsidiary  
11 of US Telecom, Inc.

12       4. The true names and capacities, whether individual, corporate, subsidiary,  
13 partnership, associate, or otherwise of Defendant Does 1 through 10, are unknown to Plaintiffs,  
14 who therefore sue these defendants by such fictitious names pursuant to Code of Civil  
15 Procedure section 474. Plaintiffs will amend their complaint to allege the true names and  
16 capacities of Does 1 through 10 when they are ascertained.

17       5. At all times mentioned herein, the acts alleged to have been done by Defendants  
18 are also alleged to have been done by the unascertained defendants mentioned above, and by  
19 each of their agents and employees who acted within the scope of their agency and/or  
20 employment.

21       6. At all times mentioned herein, each defendant acted as an agent, servant,  
22 employee, co-conspirator, alter-ego and/or joint venture of the other defendants, and in doing  
23 the things alleged herein acted within the course and scope of such agency, employment, alter-  
24 ego and/or in furtherance of the joint venture.

25       7. At all times mentioned herein, the acts and omissions of each of the defendants  
26 concurrently contributed to the various acts and omission of each and every one of the other  
27 defendants in proximately causing the wrongful conduct, harm, and damages alleged herein.  
28 Each of the defendants approved of, condoned, and/or otherwise ratified each and every one of

1 the acts or omissions complained herein. Each defendant and all Doe defendants were and are  
2 acting with authority of each and every other defendant and are acting as agents of each and  
3 every other defendant or Doe defendant.

4 **FACTUAL ALLEGATIONS**

5 8. Plaintiff Daryl Jimenez was employed by Sprint from approximately December  
6 2014 to June 2017 as a non-exempt sales representative and sales lead. Ms. Jimenez also  
7 trained to be a store manager. During her employment, she worked at multiple Sprint locations  
8 in the Bay Area of California and was paid an hourly wage, plus sales commissions.

9 9. Plaintiff Jeremy Jimenez was employed by Sprint from approximately December  
10 2014 to June 2015 as a non-exempt sales representative. During his employment, Mr. Jimenez  
11 worked at a Sprint location in Tracy, California and was paid an hourly wage, plus sales  
12 commissions.

13 10. Plaintiff Arriola was employed by Sprint from approximately September 2016 to  
14 February 2017 as a non-exempt sales representative. During his employment, Mr. Arriola  
15 worked at a Sprint location in Concord, California and was paid an hourly wage, plus sales  
16 commissions.

17 11. Plaintiffs assert that Sprint employs individuals as non-exempt retail employees  
18 under titles including but not limited to sales representative, sales lead and store manager at its  
19 various locations throughout the state of California. Plaintiffs are informed and believe that  
20 Sprint pays all retail employees an hourly wage, plus commission.

21 12. Plaintiffs allege that all retail employees in the state of California are subject to  
22 the same and/or similar policies, practices, guidelines and/or procedures described herein.

23 13. Plaintiffs further allege that they and other current or former retail employees in  
24 the state of California have suffered, and continue to suffer, the same and/or similar violations  
25 described herein.

26 14. As a policy, practice, guideline and/or procedure, Sprint regularly requires retail  
27 employees to work in excess of eight hours per day and/or forty hours per week. Overtime  
28 hours are primarily worked for the purpose of making and/or completing a sale.

1           15. As a policy, practice, guideline and/or procedure, Sprint requires retail  
2 employees to clock in and out through a timekeeping program that uses a finger print scanner  
3 attached to the individual’s work computer. The inadequacy of the computers and/or  
4 timekeeping program often results in the finger print scanner failing to accurately capture the  
5 retail employees’ in and out times. Retail employees are often not informed that their scan was  
6 not accepted until approximately twenty minutes after engaging in work related tasks.  
7 Plaintiffs assert that retail employees, including Plaintiff D. Jimenez, complained to  
8 management as well as Human Resources about the inadequacy of the timekeeping program,  
9 but to their knowledge, Sprint made no attempt to resolve the errors.

10           16. As a policy, practice, guideline and/or procedure, Sprint instructs retail  
11 employees to clock out and continue working as means to achieve the maximum number of  
12 sales.

13           17. As a policy, practice, guideline and/or procedure, Sprint requires all retail  
14 employees to install a group chat application known as “GroupMe” on their personal devices  
15 and further requires them to check and/or respond to messages throughout the day without  
16 regard to whether a retail employee is scheduled to work. Sprint does not compensate retail  
17 employees for time spent checking and/or responding to messages on “GroupMe.”

18           18. As a policy, practice, guideline and/or procedure, Sprint does not use  
19 commissions, non-discretionary bonuses, non-discretionary performance pay and/or shift  
20 differentials to calculate retail employees’ respective rate of pay as necessary for accurate  
21 calculation and payment of overtime wages.

22           19. Plaintiffs allege that, despite being entitled to sales commissions, Sprint did not  
23 provide them and other retail employees with a written contract outlining the method for  
24 calculating and paying commissions, including details pertaining to “charge backs” and “buy  
25 backs.” Additionally, Plaintiffs and other retail employees were not provided a signed copy of  
26 the written documents outlining how commissions were to be computed and paid for all  
27 positions worked.

1           20.     Plaintiff D. Jimenez further asserts that a new commission pay structure is often  
2 put in place when a retail employee changes positions within Sprint. However, Sprint failed to  
3 provide her and other retail employees with a new written contract outlining the calculation  
4 and payment of commissions upon changing positions, nor did Sprint provide a signed copy of  
5 the written commission agreement to Plaintiff D. Jimenez and other retail employees.

6           21.     Plaintiffs allege that they and other retail employees were not appropriately paid  
7 their commissions.

8           22.     Plaintiffs allege that Sprint also failed to timely pay earned commissions to  
9 Plaintiffs and other retail employees. On numerous occasions, Plaintiffs had to complain to  
10 Human Resources that their commissions appeared to be calculated inappropriately and had to  
11 wait two to three months to receive their earned commissions. Moreover, Plaintiffs D. Jimenez  
12 and Plaintiff Arriola contend that they have yet to receive their final commission payments.

13           23.     Additionally, as a policy, practice, guideline and/or procedure, Sprint unlawfully  
14 deducts “charge backs” and “buy backs” from retail employees’ commissions after the  
15 commission is already earned.

16           24.     As a policy, practice, guideline and/or procedure, Sprint instructs and pressures  
17 its retail employees to prioritize sales over all breaks. Sprint has a further policy, practice,  
18 guideline and/or procedure of understaffing its stores and/or having meetings during the  
19 workday, which results in limited staffing.

20           25.     Plaintiffs allege that they and other retail employees were not provided duty-free  
21 meal periods of thirty-minute duration. Instead, Plaintiffs allege that they often took short or  
22 late meal periods, due to the instruction and pressure from Sprint to complete sales,  
23 understaffing and/or the requirement that leads and/or managers always be available.

24           26.     Plaintiffs further assert that Sprint instructs its retail employees to clock out and  
25 work through meal periods, as well as work through rest periods, in order to push or make a  
26 sale and/or be readily available to assist customers. Additionally, leads and store managers are  
27 instructed to be readily available to other employees during meal and rest periods. All retail  
28

1 employees faced threats of termination and suspension from district managers if they did not  
2 work through their meal and rest periods.

3 27. Furthermore, the meal periods and rest periods that Plaintiffs and other retail  
4 employees did receive were often interrupted by work related tasks such as responding to a  
5 customer and/or messages on the “GroupMe” application.

6 28. Plaintiffs allege that Sprint does not have a policy, practice, guideline and/or  
7 procedure of providing retail employees with a second duty-free meal period when they work  
8 more than ten hours.

9 29. Plaintiffs and other retail employees were not able to take a second duty-free  
10 meal period when they worked more than ten hours due to the instruction and pressure to work  
11 off the clock as described herein.

12 30. Sprint did not have a policy, practice, procedure and/or guideline for retail  
13 employees to report non-compliant meal or rest periods, nor was there any way to notate non-  
14 compliant meal or rest periods in the timekeeping program.

15 31. Sprint failed to pay Plaintiffs and other current or former retail employees the  
16 legally required premium wage for non-compliant meal periods.

17 32. Sprint further failed to pay Plaintiffs and other current or former employees the  
18 legally required premium wage for non-compliant rest periods.

19 33. Plaintiffs assert that Sprint does not reimburse retail employees a reasonable  
20 percentage of their personal cellular bill and/or the cost of the personal device for the  
21 installation, space and/or use of the “GroupMe” application, despite being required to install  
22 and use the application on their personal devices for work related purposes.

23 34. Sprint willfully failed to pay, in a timely manner, all wages owed to Plaintiffs  
24 and other former retail employees who separated from Sprint as a result of Sprint’s failure to  
25 pay for all time worked, including meal and rest period premiums, improper overtime  
26 calculations and improper deductions from earned wages.

27 35. Plaintiffs further believe that it is Sprint’s policy and practice to withhold final  
28 wages for approximately six months before disbursement. For example, Plaintiff D. Jimenez

1 did not receive her final wages until about six months after termination of her employment  
2 relationship with Sprint. Additionally, Plaintiff D. Jimenez and Plaintiff Arriola have yet to  
3 receive their final commission payments.

4 36. Due to Sprint's policies, practices, guidelines and/or procedures described herein,  
5 Sprint failed to provide Plaintiffs and other current or former retail employees with accurate  
6 itemized wage statements because the wage statements did not properly reflect the number of  
7 hours worked and/or the various rates of pay, the gross and net wages earned, all deductions,  
8 and all commissions earned. Sprint also failed to include pay period information as well as the  
9 requisite employee and employer identification on the wage statements provided to Plaintiffs  
10 and other current or former retail employees.

11 37. Because of Sprint's policies, practices, guidelines and/or procedures described  
12 herein, including the inaccurate recording of time worked, Sprint also knowingly and  
13 intentionally failed to maintain accurate employee and payroll records as required by  
14 California law.

15 38. On December 5, 2017, Plaintiff D. Jimenez submitted notice to the LWDA and  
16 Defendants informing them of Sprint's alleged Labor Code violations pursuant to PAGA. A  
17 true and correct copy of the notice is attached hereto as **Exhibit 1** and is incorporated herein by  
18 this reference. On January 17, 2018, Plaintiffs D. Jimenez and Arriola submitted an amended  
19 notice to the LWDA, including Mr. Arriola as an additional representative as well as additional  
20 facts and theories to support the alleged Labor Code violations. A true and correct copy of the  
21 amended notice is attached hereto as **Exhibit 2** and is incorporated herein by this reference.

22 39. To date, the LWDA has not provided notice of whether it intends to investigate  
23 the alleged violations. Therefore, Plaintiff D. Jimenez has the right to pursue her claims under  
24 PAGA in a representative capacity pursuant to Labor Code § 2699.3. As such, Plaintiff D.  
25 Jimenez now files this representative action pursuant to Labor Code §§ 2698 *et seq.*

26 40. Plaintiffs further believe that additional violations may be discovered and  
27 therefore reserve their right to allege additional violations of the law as investigation and  
28

1 discovery warrants. In the event Plaintiffs discover additional violations through the discovery  
2 process, Plaintiffs will seek to amend the operative complaint as necessary.

3 **CLASS ALLEGATIONS**

4 41. Plaintiffs bring this action on behalf themselves, and on behalf of all persons  
5 within the defined class and/or classes included herein.

6 42. This class action meets the statutory prerequisites for the maintenance of a class  
7 action, as set forth in Code of Civil Procedure section 382 and Civil Code section 1781, in that:

- 8 a. The persons who comprise the Class are so numerous that the joinder of all  
9 such persons is impracticable and the disposition of their claims as a class  
10 will benefit the parties and the Court;
- 11 b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that  
12 are raised in this Complaint are common to the Class and will apply  
13 uniformly to every member of the Class, and as a practical matter, be  
14 dispositive of the interests of the other members not party to the adjudication;
- 15 c. The parties opposing the Class have acted or have refused to act on grounds  
16 generally applicable to the Class, thereby making final injunctive relief or  
17 declaratory relief appropriate with respect to the Class as a whole; and
- 18 d. Common questions of law and fact exist as to the members of the Class and  
19 predominate over any question affecting only individual members, and a class  
20 action is superior to other available methods for the fair and efficient  
21 adjudication of the controversy, including consideration of:
  - 22 i. The interests of Class members in individually controlling the  
23 prosecution or defense of separate actions;
  - 24 ii. The extent and nature of any litigation concerning the controversy  
25 already commenced by or against members of the Class;
  - 26 iii. The desirability or undesirability of concentrating the litigation of the  
27 claims in this particular forum; and
  - 28 iv. The likely difficulties in the managing a class action.



1           43.    The Court should permit this action to be maintained as a class action pursuant to  
2 Code of Civil Procedure section 382 and Civil Code section 1781 because:

- 3           a.    Questions of law and fact common to the Class are substantially similar and  
4               predominate over any questions affecting only individual members;
- 5           b.    A class action is superior to any other available method for the fair and  
6               efficient adjudication of Class Members' claims;
- 7           c.    The members of the Class are so numerous that it is impractical to bring all  
8               Class Members before the Court;
- 9           d.    Plaintiffs' claims are typical of the claims of the Class;
- 10          e.    Class Members will not be able to obtain effective and economic legal redress  
11               unless the action is maintained as a class action;
- 12          f.    There is a community of interest in obtaining appropriate legal and equitable  
13               relief for the common law and statutory violations and other improprieties  
14               alleged, and in obtaining adequate compensation for the damages that  
15               Defendants' actions have inflicted upon the Class;
- 16          g.    Plaintiffs can fairly and adequately protect the interests of the Class;
- 17          h.    There is a community of interest in ensuring that the combined assets and  
18               available insurance of Defendants are sufficient to adequately compensate the  
19               members of the Class for the injuries sustained; and
- 20          i.    Defendants have acted or refused to act on grounds generally applicable to  
21               the Class, thereby making final injunctive relief appropriate with respect to  
22               the Class as a whole.

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1 **CAUSES OF ACTION**

2 **FIRST CAUSE OF ACTION**

3 **(By Plaintiffs Individually and on Behalf of the Class against Defendants and Does 1-10)**

4 **FAILURE TO PAY MINIMUM WAGES AND OVERTIME COMPENSATION**

5 **[Labor Code §§ 204, 510, 1194, 1197, 1197.1, and 1198]**

6 44. Plaintiffs reallege and incorporate by this reference, as though fully set forth  
7 herein, all paragraphs of this Complaint.

8 45. Labor Code § 204 establishes an employee’s fundamental right in the state of  
9 California to be paid wages in a timely manner for their work.

10 46. Labor Code § 1197 requires employers to pay its employees the minimum wage  
11 as fixed by the commission and further states that payment of wages lower than the fixed  
12 minimum is unlawful. Where an employer causes an employee to be paid a wage less than the  
13 fixed minimum, section 1197.1 requires the employer to pay a civil penalty.

14 47. California law does not permit an employer to pay “less than the applicable  
15 minimum wage for all hours worked in the payroll period, whether the remunerations is  
16 measured by time, piece, commission, or otherwise.” *Gonzalez v. Downtown LA Motors, LP*  
17 (2013) 215 Cal.App.4th 36, 44.

18 48. Labor Code § 1198 and IWC Order No. 7-2001 make it unlawful to employ  
19 persons for more than eight hours per day or forty hours per workweek without compensating  
20 them at the rate of pay either time and one half or two times that person’s regular rate of pay  
21 depending on the number of hours worked.

22 49. Codifying the right to overtime compensation, Labor Code § 510(a) provides:

23 Eight hours of labor constitutes a day’s work. Any work in excess  
24 of eight hours in one workday and any work in excess of 40 hours  
25 in any one workweek and the first eight hours worked on the  
26 seventh day of work in any one workweek shall be compensated  
27 at the rate of no less than one and one-half times the regular rate  
28 of pay for an employee. In addition, any work in excess of eight  
hours on any seventh day of a workweek shall be compensated at  
the rate of no less than twice the regular rate of pay. Nothing in  
this section requires an employer to combine more than one rate  
of overtime compensation in order to calculate the amount to be

1 paid to an employee for any hour of overtime work. (Emphasis  
2 added.)

3 50. An employee may not waive his or her right to overtime compensation and any  
4 agreement by the employee to accept less than the statutorily required rate is unenforceable as  
5 a matter of law. *Early v. Superior Court* (2000) 79 Cal.App.4th 1420, 1430.

6 51. Section 1194(a) of the Labor Code states:

7 Notwithstanding any agreement to work for a lesser wage, any  
8 employee receiving less than the legal minimum wage or the legal  
9 overtime compensation applicable to the employee is entitled to  
10 recover in a civil action the unpaid balance of the full amount of  
11 this minimum wage or overtime compensation, including interest  
12 thereon, reasonable attorney's fees, and costs of suit.

13 52. Labor Code § 558(a) further provides:

14 Any employer or other person acting on behalf of an employer  
15 who violates, or causes to be violated, a section of this chapter or  
16 any provision regulating hours and days of work in any order of  
17 the Industrial Welfare Commission shall be subject to a civil  
18 penalty as follows:

19 (1) For any initial violation, fifty dollars (\$50) for each  
20 underpaid employee for each pay period for which the  
21 employee was underpaid in addition to an amount  
22 sufficient to recover unpaid wages.

23 (2) For each subsequent violation, one hundred dollars (\$100)  
24 for each underpaid employee for each pay period for which  
25 the employee was underpaid in addition to an amount  
26 sufficient to recover underpaid wages.

27 (3) Wages recovered pursuant to this section shall be paid to  
28 the affected employee.

53. Sprint has a policy, practice, guideline and/or procedure of regularly requiring all  
retail employees to work more than eight hours in a day and/or more than forty hours in a  
workweek. Retail employees are regularly required by Sprint to work shifts that exceed twelve  
hours in duration in order to make and/or complete a sale.

54. Sprint requires all retail employees to clock in and out of its timekeeping  
program by using a finger print scanner attached to the individual employee's work computer.  
Sprint's computer(s) and/or timekeeping program(s) often run slow and/or freeze. However,  
retail employees are not immediately informed when the finger print scanner does not accept

1 their scan, but instead are forced to attempt to clock in again after commencing work. Sprint  
2 has been made aware of its faulty timekeeping methods that cause retail employees to work off  
3 the clock. As a result, Sprint knowingly fails to adequately compensate its retail employees for  
4 all hours worked.

5 55. As a policy, practice, guideline and/or procedure, Sprint instructs all retail  
6 employees to clock out and continue working in pursuance of the maximum number of sales.  
7 As a result, Sprint fails to properly pay minimum wage and/or overtime compensation to its  
8 retail employees for all hours worked in violation of California law.

9 56. Sprint has a policy, practice, guideline and/or procedure of requiring all retail  
10 employees to install a group chat application known as “GroupMe” on their personal cellular  
11 devices. It is further Sprint’s policy, practice, guideline and/or procedure to require retail  
12 employees to check and/or respond to messages throughout the day without regard to whether  
13 the employee is scheduled to work. Because Sprint does not compensate its retail employees  
14 for the required time spent checking and responding to messages on the group chat application,  
15 Sprint fails to compensate retail employees for all hours worked.

16 57. As a policy, practice, guideline and/or procedure, Sprint fails to use the  
17 commissions, non-discretionary bonuses, non-discretionary performance pay, and/or shift  
18 differentials in calculating the rate of pay that must be used to provide accurate overtime  
19 compensation to its retail employees. Consequently, retail employees are not paid the  
20 appropriate overtime rate required under California law.

21 58. By virtue of Sprint’s unlawful failure to compensate Plaintiffs and all other retail  
22 employees for their time worked, current or former retail employees have and will continue to  
23 suffer damages in amounts which are presently unknown, but which exceed the jurisdictional  
24 limits of this Court and which will be ascertained according to proof at trial.

25 59. Having received less than the legal minimum wage and/or applicable rate of  
26 overtime compensation, Plaintiffs and other retail employees are entitled to and now seek to  
27 recover all wages and penalties owed, including penalties available under Labor Code § 558, as  
28 well as interest, reasonable attorneys’ fees and costs pursuant to Labor Code § 1194.

1 60. Plaintiffs, on behalf of themselves and other current or former retail employees,  
2 request further relief as described in the below prayer.

3 **SECOND CAUSE OF ACTION**

4 **(By Plaintiffs Individually and on Behalf of the Class against Defendants and Does 1-10)**

5 **FAILURE TO PROVIDE WRITTEN COMMISSION AGREEMENTS**

6 **[Labor Code § 2751]**

7 61. Plaintiffs reallege and incorporate by this reference, as though fully set forth  
8 herein, all paragraphs of this Complaint.

9 62. Labor Code § 2751(a) provides:

10 Whenever an employer enters into a contract of employment with an  
11 employee for services to be rendered within this state and the  
12 contemplated method of payment of the employee involves  
commissions, the contract shall be in writing and shall set forth the  
method by which the commissions shall be computed and paid.

13 Subsection (b) further requires “the employer [to] give a signed copy of the contract to every  
14 employee who is a party thereof, and... obtain a signed receipt for the contract from each  
15 employee.”

16 63. At all relevant times, Plaintiffs and other retail employees were to be paid an  
17 hourly wage, plus sales commissions.

18 64. Plaintiffs allege that Sprint failed to provide them and other retail employees  
19 with a written contract outlining the method by which commissions would be computed and  
20 paid. Plaintiff Daryl Jimenez further alleges that she and other retail employees who changed  
21 positions within Sprint did not receive a written contract outlining their new commissions pay  
22 structure. As such, Sprint violated Labor Code § 2751.

23 65. Additionally, Plaintiffs and other retail employees did not receive a signed copy  
24 of Sprint’s commission plan in violation of the Labor Code.

25 66. Plaintiffs, on behalf of themselves and other current or former retail employees,  
26 request further relief as described in the below prayer.

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1 **THIRD CAUSE OF ACTION**

2 **(By Plaintiffs Individually and on Behalf of the Class against Defendants and Does 1-10)**

3 **UNLAWFUL DEDUCTION OF WAGES**

4 **[Labor Code §§ 221 and 224]**

5 67. Plaintiffs reallege and incorporate by this reference, as though fully set forth  
6 herein, all paragraphs of this Complaint.

7 68. Section 221 of the Labor Code prohibits an employer from taking back any  
8 wages already earned by an employee.

9 69. At all relevant times, Plaintiffs' and other retail employees' wages were to  
10 include sales commissions earned upon the completion of a sale.

11 70. Sprint has a policy, practice, guideline and/or procedure of deducting "charge  
12 backs" and "buy backs" from its retail employees' commissions after the commission is  
13 already earned. As such, Sprint willfully and intentionally takes back wages already earned by  
14 retail employees in violation of California law.

15 71. Plaintiffs, on behalf of themselves and other current or former retail employees,  
16 request further relief as described in the below prayer.

17 **FOURTH CAUSE OF ACTION**

18 **(By Plaintiffs Individually and on Behalf of the Class against Defendants and Does 1-10)**

19 **SECRETLY UNDERPAID WAGES**

20 **[Labor Code §§ 223]**

21 72. Plaintiffs reallege and incorporate by this reference, as though fully set forth  
22 herein, all paragraphs of this Complaint.

23 73. At all relevant times, Plaintiffs and other retail employees were to be paid an  
24 agreed upon hourly wage, plus sales commissions.

25 74. Where an employer is required by statute or by contract to maintain a designated  
26 wage scale, Labor Code § 223 proscribes "secretly pay[ing] a lower wage to an employee  
27 while purporting to pay the wages designated by statute or by contract." The purpose of section  
28

1 223 was to address the issue where employers take secret deductions or “kickbacks” from their  
2 employees. *DeLeon v. Verizon Wireless, LLC* (2012) 207 Cal.App.4th 800, 811.

3 75. Sprint’s failure to appropriately consider earned commissions in calculating  
4 overtime rates as well as its policy, practice, guideline and/or procedure of unlawfully  
5 deducting “charge backs” and “buy backs” from earned commissions knowingly permitted  
6 Sprint to “secretly” pay its retail employees a lower wage in violation of section 223 of the  
7 Labor Code.

8 76. Plaintiffs and other current or former retail employees have suffered, and  
9 continue to suffer, damages as a result of Sprint’s knowing underpayment of wages.

10 77. Plaintiffs, on behalf of themselves and other current or former retail employees,  
11 request further relief as described in the below prayer.

12 **FIFTH CAUSE OF ACTION**

13 **(By Plaintiffs Individually and on Behalf of the Class against Defendants and Does 1-10)**

14 **FAILURE TO PROVIDE LEGALLY COMPLIANT MEAL PERIODS OR**  
15 **COMPENSATION IN LIEU THEREOF**

16 **[Labor Code §§ 226.7 and 512]**

17 78. Plaintiffs reallege and incorporate by this reference, as though fully set forth  
18 herein, all paragraphs of this Complaint.

19 79. Section 512(a) of the Labor Code provides:

20 An employer may not employ an employee for a work period of  
21 more than five hours per day without providing the employee  
22 with a meal period of not less than 30 minutes, except that if the  
23 total work period per day of the employee is no more than six  
24 hours, the meal period may be waived by mutual consent of both  
25 the employer and employee. An employer may not employ an  
26 employee for a work period of more than 10 hours per day without  
providing the employee with a second meal period of not less than  
30 minutes, except that if the total hours worked is no more than  
12 hours, the second meal period may be waived by mutual  
consent of the employer and the employee only if the first meal  
period was not waived. (Emphasis added.)

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1 80. Labor Code § 226.7(c) states:

2 If an employer fails to provide an employee a meal or rest or  
3 recovery period in accordance with a state law, including, but not  
4 limited to, an applicable statute or applicable regulation, standard, or  
5 order of the Industrial Welfare Commission, the Occupational Safety  
6 and Health Standards Board, or the Division of Occupational Safety  
7 and Health, the employer shall pay the employee one additional hour  
8 of pay at the employee's regular rate of compensation for each  
9 workday that the meal or rest or recovery period is not provided.

10 81. In pertinent part, IWC Order No. 7-2001, item 11, states:

11 (A) No employer shall employ any person for a work period of more  
12 than five (5) hours without a meal period of not less than 30 minutes,  
13 except that when a work period of not more than six (6) hours will  
14 complete the day's work the meal period may be waived by mutual  
15 consent of the employer and the employee.

16 (B) An employer may not employ an employee for a work period of  
17 more than ten (10) hours per day without providing the employee  
18 with a second meal period of not less than 30 minutes, except that if  
19 the total hours worked is no more than 12 hours, the second meal  
20 period may be waived by mutual consent of the employer and the  
21 employee only if the first meal period was not waived.

22 (D) If an employer fails to provide an employee a meal period in  
23 accordance with the applicable provisions of this order, the employer  
24 shall pay the employee one (1) hour of pay at the employee's regular  
25 rate of compensation for each workday that the meal period is not  
26 provided.

27 82. A meal period generally comports with the requirements under California law if  
28 the employee (1) has at least 30 minutes uninterrupted, (2) is free to leave the premises, and (3)  
is relieved of all duty for the entire period. *See Brinker Restaurant Corp. v. Superior Court*  
(2012) 53 Cal.4th 1004, 1036 [citing DLSE Opn. Letter No. 1996.07.12 (July 12, 1996) p.1].  
Additionally, "an employer may not undermine formal policy of providing meal breaks by  
pressuring employees to perform their duties in ways that omit breaks." *Id.* at 1040 (citations  
omitted).

83. At all relevant times, Plaintiffs and other retail employees typically worked at  
least an eight-hour workday.

84. Plaintiffs allege that they and other retail employees did not typically receive  
legally compliant meal periods due to Sprint's policy, practice, guideline and/or procedure of  
instructing and pressuring its retail employees to prioritize sales over all breaks, as described



1 herein. As a result, Plaintiffs and other retail employees often experienced short, late, missed  
2 and/or interrupted meal periods.

3 85. Sprint's additional policies, practices, guidelines and/or procedures of  
4 understaffing its stores, having meetings during the workday, which results in limited staffing,  
5 and requiring leads and/or managers to always be available caused Plaintiffs and other retail  
6 employees to be deprived of 30-minute duty-free meal periods in violation of California law.

7 86. Plaintiffs further allege that Sprint instructs and pressures its retail employees to  
8 clock out and work through, or be readily available to work during, meal periods. Plaintiffs  
9 also allege that retail employees were threatened by district managers to work through their  
10 meal periods to make a sale or face suspension or termination.

11 87. Additionally, Plaintiffs allege that they and other retail employees were not given  
12 the opportunity to take a second meal period when they worked more than ten hours in a day.

13 88. Plaintiffs believe that Sprint knew or should have known that its retail employees  
14 were not provided with legally compliant meal periods.

15 89. Sprint failed to pay the premium wage required by California law to Plaintiffs  
16 and other retail employees for noncompliant meal periods.

17 90. Sprint's unlawful conduct caused Plaintiffs and other current or former retail  
18 employees to suffer, and they will continue to suffer, damages in an amount which is presently  
19 unknown, but which exceeds the jurisdictional limits of this Court and which will be  
20 ascertained according to proof at trial.

21 91. Pursuant to Labor Code § 226.7(c) and the relevant IWC Order No. 4-2001, item  
22 11(D), Plaintiffs and other current or former retail employees are entitled to, and seek to,  
23 recover the full amount of unpaid premium wages for noncompliant meal periods.

24 92. Pursuant to Labor Code § 218.6, Plaintiffs and other current or former retail  
25 employees are entitled to, and seek to, recover prejudgment interest on the amount of premium  
26 wages owed.

27 93. Plaintiffs and other current or former retail employees are entitled to, and seek to,  
28 recover reasonable attorneys' fees as permitted by Labor Code § 218.5.

1 94. Plaintiffs, on behalf of themselves and other current or former retail employees,  
2 request further relief as described in the below prayer.

3 **SIXTH CAUSE OF ACTION**

4 **(By Plaintiffs Individually and on Behalf of the Class against Defendants and Does 1-10)**

5 **FAILURE TO PROVIDE LEGALLY COMPLIANT REST PERIODS OR**  
6 **COMPENSATION IN LIEU THEREOF**

7 **[Labor Code §§ 226.7]**

8 95. Plaintiffs reallege and incorporate by this reference, as though fully set forth  
9 herein, all paragraphs of this Complaint.

10 96. In pertinent part, Labor Code § 226.7 states:

11 (b) An employer shall not require an employee to work during a  
12 meal or rest or recovery period mandated pursuant to an  
13 applicable statute, or applicable regulation, standard, or order of  
14 the Industrial Welfare Commission, the Occupational Safety and  
15 Health Standards Board, or the Division of Occupational Safety  
16 and health.

17 (c) If an employer fails to provide an employee a meal or rest or  
18 recovery period in accordance with a state law, including but not  
19 limited to, an applicable statute or applicable regulation,  
20 standard, or order of the Industrial Welfare Commission, the  
21 Occupational Safety and Health Standards Board, or the Divisor  
22 of Occupational Safety and Health, the employer shall pay the  
23 employee one additional hour of pay at the employee's regular  
24 rate of compensation for workday that the meal or rest or recovery  
25 period is not provided.

26 97. IWC Order No. 4-2001, item 12 provides:

27 (A) Every employer shall authorize and permit all employees to  
28 take rest periods, which insofar as practicable shall be in the  
middle of each work period. The authorized rest period time shall  
be based on the total hours worked daily at the rate of ten (10)  
minutes of net rest time per four (4) hours or major fraction  
thereof. However, a rest period need not be authorized for  
employees whose total daily work time is less than three and one-  
half (3 ½) hours. Authorized rest period time shall be counted as  
hours worked for which there shall be no deduction from wages.

(B) If an employer fails to provide an employee a rest period in  
accordance with the applicable provisions of this order, the  
employer shall pay the employee one (1) hour of pay at the  
employee's regular rate of compensation for each workday that  
the rest period is not provided. (Emphasis added.)

1           98.    At all relevant times, Plaintiffs and other retail employees typically worked at  
2 least an eight-hour workday.

3           99.    Sprint, as described herein, has a policy, practice, guideline and/or procedure of  
4 pressuring its retail employees to prioritize sales over all breaks. It is also Sprint's policy,  
5 practice, guideline and/or procedure to understaff or limit the staffing in its stores.

6           100.   Plaintiffs allege that they and other retail employees did not receive timely duty-  
7 free rest periods due to Sprint's instruction to engage in work, or be readily available to engage  
8 in work, during rest periods. Plaintiffs further allege that retail employees were threatened by  
9 district managers to work through their rest periods to make a sale or face suspension or  
10 termination.

11          101.   Plaintiffs believe that Sprint knew or should have known that its retail employees  
12 were not provided with legally compliant rest periods.

13          102.   Sprint failed to pay Plaintiffs and other current or former retail employees the  
14 premium wage required by California law for noncompliant rest periods.

15          103.   Due to Sprint's unlawful conduct, Plaintiffs and other current or former retail  
16 employees have and will continue to suffer damages in an amount which is presently unknown,  
17 but which exceeds the jurisdictional limits of this Court and which will be ascertained  
18 according to proof at trial.

19          104.   According to Labor Code § 226.7(c) and IWC Order No. 4-2001, item 12(B),  
20 Plaintiffs and other current or former retail employees are entitled to, and seek to, recover the  
21 full amount of unpaid premium wages for noncompliant rest periods.

22          105.   Pursuant to Labor Code § 218.6, Plaintiffs and other current or former retail  
23 employees are entitled to, and seek to, recover prejudgment interest on the amount of premium  
24 wages owed.

25          106.   Plaintiffs and other current or former retail employees are entitled to, and seek to,  
26 recover reasonable attorneys' fees and costs pursuant to Labor Code § 218.5.

27          107.   Plaintiffs, on behalf of themselves and other current or former retail employees,  
28 request further relief as described in the below prayer.

1 **SEVENTH CAUSE OF ACTION**

2 **(By Plaintiffs Individually and on Behalf of the Class against Defendants and Does 1-10)**

3 **FAILURE TO REIMBURSE FOR NECESSARY WORK EXPENSES**

4 **[Labor Code §§ 2800 and 2802]**

5 108. Plaintiffs reallege and incorporate by this reference, as though fully set forth  
6 herein, all paragraphs of this Complaint.

7 109. Labor Code § 2800 requires employers in all cases to indemnify employee losses  
8 caused by the employer’s want of ordinary care.

9 110. In pertinent part, Labor Code § 2802 provides:

10 (a) An employer shall indemnify his or her employee for all  
11 necessary expenditures or losses incurred by the employee in direct  
consequence of the discharge of his or her duties...

12 (c) For purposes of this section, the term “necessary expenditures or  
13 losses” shall include all reasonable costs, including, but not limited  
14 to, attorney’s fees incurred by the employee enforcing the rights  
granted by this section.

15 111. As a policy, practice, guideline and/or procedure, Sprint requires its retail  
16 employees to install on their personal devices a group chat application called “GroupMe” for  
17 work related purposes.

18 112. Sprint does not reimburse its retail employees a reasonable percentage of their  
19 personal cellular bill, nor does Sprint reimburse its retail employees for the cost of the device  
20 for the installation, storage and/or the use of the “GroupMe” application, despite requiring the  
21 installation and use of “GroupMe” on their personal devices as a condition of employment.

22 113. Plaintiffs and other current or former retail employees are entitled to and seek  
23 reimbursement of their necessary expenditures, plus interest, including reasonable attorneys’  
24 fees and costs pursuant to Labor Code § 2802.

25 114. Plaintiffs, on behalf of themselves and other current or former retail employees,  
26 request further relief as described in the below prayer.

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1 **EIGHTH CAUSE OF ACTION**

2 **(By Plaintiffs Individually and on Behalf of the Class against Defendants and Does 1-10)**

3 **FAILURE TO PAY WAGES OWED**

4 **[Labor Code §§ 201-203]**

5 115. Plaintiffs reallege and incorporate by this reference, as though fully set forth  
6 herein, all paragraphs of this Complaint.

7 116. Labor Code § 200(a) defines “wages” to include “all amounts for labor  
8 performed by employees...whether the amount is fixed or ascertained by the standard of  
9 time...commission basis, or other method of calculation.” The term “labor” is further defined in  
10 subsection (b) to include “labor, work, or service whether rendered or performed under  
11 contract, subcontract, partnership...or other agreement if the labor...is performed personally by  
12 the person demanding payment.”

13 117. Pursuant to Labor Code § 201(a), “[i]f an employer discharges an employee, the  
14 wages earned and unpaid at the time of discharge are due and payable immediately.”

15 118. According to Labor Code § 202(a):

16 If an employee not having a written contract for a definite period  
17 quits his or her employment, his or her wages shall become due  
18 and payable not later than 72 hours thereafter, unless the  
19 employee has given 72 hours previous notice of his or her  
20 intention to quit, in which case the employee is entitled to his or  
21 her wages at the time of quitting. Notwithstanding any other  
22 provision of law, an employee who quits without providing a 72-  
hour notice shall be entitled to receive payment by mail if he or  
she so requests and designates a mailing address. The date of  
mailing shall constitute the date of payment for purposes of the  
requirement to provide payment with 72 hours of the notice of  
quitting.

23 119. In pertinent part, Labor Code § 203(a) further provides:

24 If an employer willfully fails to pay, without abatement or  
25 reduction, in accordance with Sections 201, 201.3, 201.5, 201.9,  
26 202, and 205.5, any wages of an employee who is discharged or  
27 who quits, the wages of the employee shall continue as a penalty  
28 from the due date thereof at the same rate until paid or until an  
action thereof is commenced; but the wages shall not continue for  
more than 30 days.

1 120. Sprint knowingly failed to compensate its retail employees for all time worked,  
2 as described herein.

3 121. Although Sprint no longer employs a number of its retail employees, including  
4 Plaintiffs, Sprint has yet to pay all wages owed to former retail employees as required under  
5 California law.

6 122. Plaintiffs additionally believe that Sprint has a policy, practice, guideline and/or  
7 procedure of not paying separated employees their final wages within the time prescribed by  
8 California law. For example, Plaintiff D. Jimenez did not receive her final wages until  
9 approximately six months after her separation from Sprint. Plaintiffs thus believe that Sprint  
10 withholds retail employees' final pay for approximately six months. Furthermore, Plaintiffs D.  
11 Jimenez and Arriola have yet to receive their final earned commissions.

12 123. As a consequence of Sprint's willful and deliberate refusal to render such wages,  
13 Plaintiffs and other affected retail employees are entitled to, and thus seek, a maximum of 30  
14 days' wages at their daily rate of pay as a waiting time penalty. *See* Labor Code § 203.

15 124. Plaintiffs, on behalf of themselves and other current or former retail employees,  
16 request further relief as described in the below prayer.

17 **NINTH CAUSE OF ACTION**

18 **(By Plaintiffs Individually and on Behalf of the Class against Defendants and Does 1-10)**

19 **FAILURE TO FURNISH ACCURATE WAGE STATEMENTS**

20 **[Labor Code §§ 226 and 226.3]**

21 125. Plaintiffs reallege and incorporate by this reference, as though fully set forth  
22 herein, all paragraphs of this Complaint.

23 126. Labor Code § 226 states in pertinent part:

24 Every employer shall, semimonthly or at the time of each  
25 payment of wages, furnish each of his or her employees, either as  
26 detachable part of the check, draft, or voucher paying the  
27 employee's wages, or separately when wages are paid by personal  
28 check or cash, an accurate itemized statement in writing showing  
(1) gross wages earned, (2) total hours worked by the employee...  
(4) all deductions... (5) net wages earned, (6) the inclusive dates  
of the period for which the employee is paid... (7) the name of  
the employee and only the last four digits of his or her social

1 security number or an employee identification number...(8) the  
2 name and address of the legal entity that is the employer, and (9)  
3 all applicable hourly rates in effect during each period and the  
4 corresponding number of hours worked at each hourly rate by the  
5 employee...”

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10 127. Labor Code § 226(e)(1) further provides:

11 An employee suffering injury as a result of knowing and  
12 intentional failure by an employer to comply with subdivision (a)  
13 is entitled to recover the greater of all actual damages or fifty  
14 dollars (\$50) for the initial pay period in which a violation occurs  
15 and one hundred dollars (\$100) per employee for each violation  
16 in a subsequent pay period, not to exceed an aggregate penalty of  
17 four thousand (\$4,000), and is entitled to an award of costs and  
18 reasonable attorneys’ fees.

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22 128. According to Labor Code § 266(h), “an employee may also bring an action for  
23 injunctive relief to ensure compliance with this section and is entitled to an award of costs and  
24 reasonable attorneys’ fees.”

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28 129. An injury occurs where the employer fails to provide accurate information and  
the employee cannot “promptly and easily determine” the total number of hours worked or the  
“applicable hourly rates in effect during the pay period and the corresponding number of hours  
worked at each hourly rate.” Labor Code § 226(a)(9)-(e)(2)(B)(i).

130. Labor Code § 226(e)(2)(c) explains that the phrase “promptly and easily  
determine” means that “a reasonable person would be able to readily ascertain the information  
without reference to documents or information.”

131. Sprint’s policies, practices, guidelines and/or procedures of inadequately  
compensating retail employees and improperly deducting from earned wages resulted in wage  
statements that were not properly reflective of gross wages earned, all deductions, net wages  
earned, and/or all commissions earned. Additionally, as Sprint did not permit retail employees  
to record their actual time worked, the total hours worked are inaccurately listed on the wage  
statements. Sprint also failed to properly itemize the total hours worked and the applicable  
rates of pay on its retail employees wage statements. Moreover, pay period information and the  
required employee and employer identification information were not properly included on each

1 wage statement. As a result, Plaintiffs and other current or former retail employees were unable  
2 to readily ascertain from their wage statements whether they were properly compensated.

3 132. Pursuant to California law, Plaintiffs and other current or former retail employees  
4 have suffered injury resulting from Sprint's knowing and intentional failure to furnish accurate  
5 itemized wage statements.

6 133. According to Labor Code § 226(e), Plaintiffs and other current or former retail  
7 employees are entitled to, and seek to recover, liquidated damages in the amount of \$50.00 for  
8 the initial violation and \$100.00 for each subsequent violation per employee, not to exceed  
9 \$4,000.00.

10 134. Additionally, pursuant to Labor Code § 226.3, Plaintiffs and other current or  
11 former retail employees are entitled to, and seek to recover, a civil penalty in the amount of  
12 \$250 per employee per violation in an initial citation and \$1,000 per employee for each  
13 violation in a subsequent citation, for violations of Labor Code § 226(a).

14 135. Furthermore, pursuant to Labor Code § 226(h), Plaintiffs and other current or  
15 former retail employees are entitled to, and therefore seek, injunctive relief in order to ensure  
16 that Sprint complies with Labor Code § 266.

17 136. Plaintiffs and other current or former retail employees are further entitled to, and  
18 seek to recover, attorneys' fees and costs as provided under Labor Code § 266(h).

19 137. Plaintiffs, on behalf of themselves and other retail employees request further  
20 relief as described in the below prayer.

21 **TENTH CAUSE OF ACTION**

22 **(By Plaintiffs Individually and on Behalf of the Class against Defendants and Does 1-10)**

23 **FAILURE TO MAINTAIN ACCURATE RECORDS**

24 **[Labor Code §§ 226 and 1174]**

25 138. Plaintiffs reallege and incorporate by this reference, as though fully set forth  
26 herein, all paragraphs of this Complaint.

27 139. Pursuant to Labor Code § 226(a), an employer must keep a copy of the statement  
28 and the record of deductions on file for at least three years.



1 140. According to Labor Code § 1174(d):

2 “[e]very person employing labor in this state shall keep, at a central  
3 location in the state or at the plants or establishments at which  
4 employees are employed, payroll records showing the hours  
5 worked daily by and the wages paid to, and the number of piece-  
6 rate units earned by and any applicable piece rate paid to,  
7 employees employed at the respective plants or establishments.  
8 These records shall be kept in accordance with rules established for  
9 this purpose by commission, but in case shall be kept on file for not  
10 less than three years. An employer shall not prohibit an employee  
11 from maintaining a personal record of hours worked, or, if paid on  
12 a piece-rate basis, piece-rate units earned.”

13 141. Plaintiffs allege that Sprint as described herein has a policy, practice, guideline  
14 and/or procedure of intentionally and willfully failing to maintain accurate payroll records that  
15 properly show the total number of hours worked as well as the wages paid each day to  
16 Plaintiffs and other retail employees, including the failure to record and compensate for time  
17 worked off the clock during meal periods, because Sprint knew that its retail employees were  
18 working off the clock in order to make a sale.

19 142. Plaintiffs and other current or former retail employees have suffered, and  
20 continue to suffer, injuries and damages as a consequence of Sprint’s deliberate failure to  
21 maintain accurate records as required by the Labor Code. More specifically, Plaintiffs and  
22 other retail employees were denied their legal right and protected interest in having accurate  
23 and complete payroll records available to them.

24 143. Plaintiffs and other current or former retail employees are thus entitled to, and  
25 seek damages as outlined in Labor Code § 226.7(e)(1).

26 144. Plaintiffs, on behalf of themselves and other retail employees, request further  
27 relief as described in the below prayer.

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1 **ELEVENTH CAUSE OF ACTION**

2 **(By Plaintiffs Individually and on Behalf of the Class against Defendants and Does 1-10)**

3 **UNFAIR BUSINESS PRACTICES**

4 **[Bus. & Prof. Code §§ 17200 *et seq.*]**

5 145. Plaintiffs reallege and incorporate by this reference, as though fully set forth  
6 herein, all paragraphs of this Complaint.

7 146. As codified in Bus & Prof. Code §§ 17200 *et seq.*, California’s Unfair  
8 Competition Law (“UCL”) broadly prohibits “any unlawful, unfair or fraudulent business act  
9 or practice.”

10 147. A cause of action may be brought under the UCL if a practice violates some  
11 other law. The “unlawful” prong of the UCL effectively deems a violation of the underlying  
12 law a *per se* violation of Bus. & Prof. Code §§ 17200. *Cel-Tech Commc’ns, Inc. v. Los Angeles*  
13 *Cellular Tel. Co.* (1999) 20 Cal.4th 163, 180. Virtually any law or regulation – federal or state,  
14 statutory, or common law – can serve as a predicate for a § 17200 “unlawful” violation.  
15 *Farmers Ins. Exch. v. Superior Court* (1992) 2 Cal.4th 377, 383.

16 148. The “unfair” prong of the UCL does not require a practice to be specifically  
17 proscribed by any law. *Korea Supply Co. v. Lockheed Martin Corp.* (2003) 20 Cal.4th 1134,  
18 1143 [internal citations omitted]. Pursuant to the California Supreme Court, the “unfair  
19 standard” is intentionally broad to give maximum discretion to courts in prohibiting new  
20 schemes to defraud. *Cel-Tech Commc’ns, Inc.*, 20 Cal.4th at 180-81.

21 149. Under the UCL, a “fraudulent” business act or practice is one where “members  
22 of the public are likely to be deceived.” *Blakemore v. Superior Court* (2005) 129 Cal. App. 4th  
23 36,49. A showing of actual deception, reasonable reliance, or damages is not required. *Id.* The  
24 fraudulent prong may be used to attack the deceptive manner in which otherwise lawful  
25 contract terms are presented to an individual. *Boschma v. Home Loan Ctr., Inc.* (2011) 198  
26 Cal.App.4th 230, 253. As such, even a true statement may be unlawful under section 17200 if  
27 it is “couched in such a manner that is likely to mislead or deceive..., such as by failing to  
28 disclose other relevant information.” *Id.*

1 150. As discussed herein, Sprint’s business practices violate all three prongs of  
2 California’s UCL.

3 Unlawful

4 151. As described herein, Sprint violated the Labor Code by refusing to properly  
5 compensate retail employees for all time worked. Failing to compensate employees for all time  
6 worked is a clear violation of California law, and thus a per se violation of the UCL. *Cel-Tech*  
7 *Commc’ns, Inc.*, 20 Cal.4th at 180. Additionally, Sprint violated the Labor Code by failing to  
8 provide retail employees with written commission agreements as well as by secretly paying  
9 lower wages as a result of unlawful deductions from retail employees earned commissions.  
10 Sprint further failed to compensate retail employees for non-compliant meal and rest periods as  
11 provided by California law. Sprint’s failure to promptly pay wages owed upon termination,  
12 failure to reimburse for necessary business expenses and failure to maintain accurate records  
13 are also violations of California law. Therefore, Sprint has clearly engaged in unlawful  
14 business practices pursuant to Bus. & Prof. Code §§ 17200 *et seq.*

15 Unfair

16 152. Sprint’s practices of not permitting retail employees to accurately record time  
17 work and coercing retail employees to work off the clock in order to make and/or complete a  
18 sale are inherently unfair because Sprint knowingly prevents retail employees from receiving  
19 adequate compensation for all time worked in violation of California’s policy of prompt  
20 payment of wages.

21 153. Sprint’s failure to reimburse retail employees for expenses related to the  
22 installation and use of the “GroupMe” application on their personal devices constitutes an  
23 unfair practice as Sprint requires retail employees to install and use the application for work  
24 purposes. It is further unfair for Sprint not to compensate retail employees for time spent  
25 checking and responding to messages on the “GroupMe” application especially as they are  
26 required to do so even on days that they are not scheduled to work.

27 154. Sprint’s practice of failing to provide off-duty meal and rest periods to its retail  
28 employees, and threatening retail employees with termination and suspension if they do not

1 work through their breaks, is an unfair practice because it knowingly strips retail employees of  
2 the rights afforded to them by the Labor Code.

3 155. Sprint also violates the unfair prong of the UCL by failing to pay premium wages  
4 to retail employees for non-compliant meal and rest periods and for withholding retail  
5 employees' final wages for approximately six months after termination of the employment  
6 relationship.

7 156. Additionally, Sprint's failure to pay Plaintiffs D. Jimenez and Arriola and other  
8 former retail employees their final earned commission violates the unfair prong of the UCL.

9 Fraudulent

10 157. Sprint's failure to consider commissions when calculating each retail employee's  
11 respective overtime rate of pay constitutes a fraudulent business practice as it knowingly and  
12 intentionally causes retail employees to not receive appropriate compensation for hours worked  
13 in excess of eight each day and/or forty each workweek.

14 158. Defendant's practice of deducting "charge backs" and "buy backs" from earned  
15 commissions is not only unlawful but constitutes a fraudulent business practice as does  
16 Defendant's practice of failing to provide written contracts outlining the method for computing  
17 and paying commissions. This is particularly true because the deductions are made after the  
18 commissions are already earned, and the retail employees are unaware of how commissions are  
19 to be calculated and paid.

20 159. Defendant's practice of providing Plaintiffs and other retail employees with  
21 inaccurate wage statements also constitutes a fraudulent business practice as Plaintiffs and  
22 other retail employees are likely to be, and actually are deceived as to whether they were paid  
23 for all time worked.

24 160. Sprint's practice of failing to maintain accurate records is also a fraudulent  
25 business practice as the inaccuracies intentionally mislead retail employees as to their total  
26 hours worked and wages earned.

1 161. As a direct and proximate result of Sprint’s unlawful, unfair and fraudulent  
2 business practices, Plaintiffs and other current or former retail employees have suffered injury-  
3 in-fact and have lost wages rightfully owed to them.

4 162. Through their unlawful, unfair and fraudulent conduct, Sprint has been unjustly  
5 enriched by receiving and continuing to receive benefits and profits at the expense of its retail  
6 employees. Therefore, pursuant to Bus. & Prof. Code §§ 17200 *et seq.*, Sprint should be  
7 enjoined from this activity and made to disgorge all ill-gotten gains and restore Plaintiff and  
8 other current or former retail employees the wages wrongfully withheld from them.

9 163. Moreover, the unlawful, unfair and fraudulent conduct alleged herein has  
10 continued, and there is no indication that Sprint will refrain from such activity in the future  
11 especially as Sprint knowingly deters the accurate reporting of time worked. Plaintiffs believe  
12 and allege that if Sprint is not enjoined from the conduct described herein, they will continue to  
13 violate California law at the expense of its retail employees. Accordingly, Plaintiffs request  
14 that the court issue a preliminary and permanent injunction against Sprint.

15 164. Plaintiffs, on behalf of themselves and other current or former retail employees,  
16 request further relief as described in the below prayer.

17 **TWELTH CAUSE OF ACTION**

18 **(By Plaintiff Daryl Jimenez in her Representative Capacity**  
19 **against Defendants and Does 1-10)**

20 **PRIVATE ATTORNEY GENERAL ACT OF 2004**

21 **[Labor Code §§ 2698 *et seq.*]**

22 165. Plaintiff D. Jimenez realleges and incorporates by this reference, as though fully  
23 set forth herein, all paragraphs of this Complaint.

24 166. Pursuant to The Private Attorneys General Act of 2004 (“PAGA”), any provision  
25 of the Labor Code allowing for a civil penalty to be assessed and collected by the Labor and  
26 Workforce Development Agency (“LWDA”), or any of its departments, divisions,  
27 commissions, boards, agencies, or employees, for a California Labor Code violation, may be  
28 recovered through a civil action brought by an aggrieved employee on behalf of himself or

1 herself, and other current or former employees. Such civil penalties are in addition to any other  
2 relief provided for under the Labor Code and must be allocated seventy-five percent (75%) to  
3 the LWDA and twenty-five percent (25%) to the aggrieved employees pursuant to § 2699(i).

4 167. During all, or a portion of, the one-year period before Plaintiffs Daryl Jimenez  
5 and Abel Arriola filed notice of their claims with the LWDA, Plaintiffs D. Jimenez and Arriola  
6 and each of the other current or former employees they represent were employed by  
7 Defendants in the state of California.

8 168. Plaintiffs D. Jimenez and Arriola are “aggrieved employees” under PAGA, as  
9 they were employed by Defendants within the past year and suffered one or more violations of  
10 the Labor Code.

11 169. Plaintiffs D. Jimenez and Arriola have complied with the notice requirements  
12 outlined in Labor Code § 2699.3. On December 5, 2017, Plaintiff D. Jimenez submitted notice  
13 to the LWDA and Defendants informing them of Sprint’s alleged Labor Code violations  
14 pursuant to PAGA. *See* Exhibit 1. The LWDA had 65 days to provide notice of whether it  
15 intended to investigate the alleged violations. To date, the LWDA has not provided notice of  
16 whether it intends to investigate the alleged violations. Plaintiff D. Jimenez thus has the right  
17 to pursue, and does pursue, her claims under PAGA in a representative capacity pursuant to  
18 Labor Code § 2699.3.

19 170. To the extent applicable, Plaintiff Arriola has complied with the notice  
20 requirements outlined in PAGA. Plaintiffs D. Jimenez and Arriola submitted an amended  
21 notice on January 17, 2018, to the LWDA, which included Mr. Arriola as an additional  
22 representative as well as additional facts and theories supporting the alleged Labor Code  
23 violations. *See* Exhibit 2. The LWDA has 65 days from the date of submission to notify the  
24 parties whether it intends to investigate. In the event the LWDA elects not to investigate,  
25 Plaintiffs will seek to amend this complaint to include Plaintiff Arriola as an additional PAGA  
26 representative.

27 171. As set forth herein, Sprint has committed, and continues to commit, numerous  
28 violations for which the Labor Code entitled Plaintiff D. Jimenez in her representative

1 capacity, to recover, on behalf of herself and all other current or former retail employees and  
2 the general public, attorneys' fees and costs, as well as statutory penalties against Sprint for the  
3 alleged Labor Code violations, described herein.

4 172. Plaintiffs D. Jimenez, in her representative capacity, seeks to recover civil  
5 penalties for her PAGA claim through a representative action based on violations of the  
6 following Labor Code provisions:

- 7 a. Failure to pay minimum wages and overtime compensation in violation  
8 of Labor Code §§ 204, 510, 1194, 1197, 1197.1, and 1198;
- 9 b. Failure to provide written commission agreements in violation of  
10 Labor Code § 2751;
- 11 c. Unlawful deduction of wages in violation of Labor Code §§ 221 and  
12 224;
- 13 d. Secretly underpaid wages in violation of Labor Code § 223;
- 14 e. Failure to provide legally compliant meal periods or compensation in  
15 lieu thereof in violation of Labor Code §§ 226.7, 512 and relevant  
16 IWC Wage Orders;
- 17 f. Failure to provide legally compliant rest periods or compensation in  
18 lieu thereof in violation of Labor Code § 226.7 and relevant IWC  
19 Wage Orders;
- 20 g. Failure to reimburse for necessary work expenses in violation of Labor  
21 Code §§ 2800 and 2802;
- 22 h. Failure to pay wages owed in violation of Labor Code §§ 201 – 203;
- 23 i. Failure to furnish accurate itemized wage statements in violation of  
24 Labor Code §§ 226;
- 25 j. Failure to maintain accurate records in violation of Labor Code §§ 226  
26 and 1174;

27 173. For violations of Labor Code §§ 510 and 512, in addition to any other  
28 recovery provided by law, Labor Code § 558 imposes a civil penalty of \$50 per pay period

1 for each underpaid employee for the initial violation and \$100 per pay period for each  
2 underpaid employee for each subsequent violation of any section of Labor Code Division  
3 2, Part 2, Chapter 1, or any provision regulating hours and days of work in any order of the  
4 IWC. Labor Code § 558 also requires that any recovery of wages be paid to the affected  
5 employee. Therefore, Plaintiff D. Jimenez, and other current or former retail employees  
6 are entitled to and do seek such civil penalties.

7 174. Labor Code § 226.3 imposes a civil penalty of \$250 per employee per  
8 violation in an initial citation and \$1,000 per employee for each violation in a subsequent  
9 citation for violations of Labor Code § 226(a). Therefore, Plaintiff D. Jimenez and other  
10 current or former retail employees are entitled to and seek the described civil penalty.

11 175. Labor Code § 225.5 imposes a civil penalty of \$100 for each failure to pay  
12 each employee, and \$200 for each failure to pay each employee, plus 25 percent of the  
13 amount unlawfully withheld for each subsequent violation, or any willful or intentional  
14 violation of Labor Code §§ 221 and 223.

15 176. Labor Code § 2699(f) imposes a civil penalty of \$100 per pay period, per  
16 employee for the initial violation, and \$200 per pay period, per employee for each  
17 subsequent violation for all Labor Code provisions for which a civil penalty is not  
18 specifically provided, including Labor Code §§ 201, 202, 203, 204, 221, 223, 224, 226,  
19 226.7, 510, 512, 1174, 1194, 1197, 1197.1, 1198, 2751, 2800, 2802. Plaintiff D. Jimenez  
20 and other current or former retail employees are entitled to, and therefore seek, the above  
21 described civil penalty.

22 177. Lastly, Labor Code § 2699(g)(1) provides that an employee who prevails in a  
23 civil action brought pursuant to PAGA shall be entitled to an award of reasonable  
24 attorneys' fees and costs. As such, Plaintiff D. Jimenez is entitled to, and therefore seeks,  
25 attorneys' fees and costs.

26 178. Plaintiffs D. Jimenez in her representative capacity, requests further relief as  
27 described in the below prayer.

28 ///



**PRAYER FOR RELIEF**

1  
2 Plaintiffs pray for judgment against Defendants and in favor of the Class and  
3 Representative Action as follows:

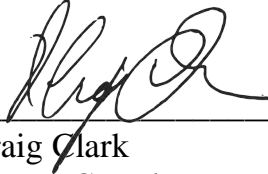
- 4 1. For an order determining that this action may be maintained as a class  
5 action with the named Plaintiffs as the class representatives;
- 6 2. For the attorneys appearing on the above caption to be named class  
7 counsel;
- 8 3. For an order determining that this action may be maintained as a  
9 representative action with Plaintiff Daryl Jimenez as the representative;
- 10 4. For all wages and benefits due to Plaintiffs and other current or former  
11 retail employees of Defendants;
- 12 5. For all minimum wages and overtime compensation owed pursuant to  
13 Labor Code §§ 510, 1194, 1197.1, and/or other applicable law;
- 14 6. For all commissions owed pursuant to Labor Code §§ 221, 223, and/or  
15 other applicable law;
- 16 7. For premium wages pursuant to Labor Code § 226.7;
- 17 8. For unreimbursed business expenses pursuant to Labor Code §§ 2800  
18 and 2802;
- 19 9. For waiting time penalties pursuant to Labor Code § 203, and/or other  
20 applicable law;
- 21 10. For damages, pursuant to Labor Code § 226, and/or other applicable  
22 law;
- 23 11. For all liquidated damages, pursuant to Labor Code §§ 226(e),  
24 1194.4(a), 1197.1, and/or other applicable law;
- 25 12. For civil penalties, pursuant to Labor Code §§ 558, 1197.1, and/or other  
26 applicable law;
- 27 13. For PAGA civil penalties pursuant to Labor Code §§ 2698 *et seq.*;

- 1 14. For injunctive relief, pursuant to Labor Code § 266(h) and Bus. & Prof.  
2 Code § 17203, and/or other applicable law;  
3 15. For restitution for Defendants' unfair, unlawful, and fraudulent business  
4 practices;  
5 16. For reasonable attorneys' fees and costs of suit pursuant to Labor Code  
6 §§ 218.5, 266(h), 266(e)(1), 1194, 2802, 2699(g), and/or other  
7 applicable law;  
8 17. For pre-judgment and post-judgment interest as provided by California  
9 law;  
10 18. For appropriate equitable relief; and  
11 19. For all other relief the Court may deem just and proper.

12  
13 Dated: February 23, 2018

**CLARK LAW GROUP**

14  
15 By: \_\_\_\_\_

  
16 R. Craig Clark  
17 Jessica R. Corrales  
18 Monique R. Rodriguez  
19 *Attorneys for Plaintiff*


**DEMAND FOR JURY TRIAL**

20 Plaintiffs hereby demand a jury trial on all triable issues.

21  
22 Dated: February 23, 2018

**CLARK LAW GROUP**

23  
24 By: \_\_\_\_\_

  
25 R. Craig Clark  
26 Jessica R. Corrales  
27 Monique R. Rodriguez  
28 *Attorneys for Plaintiff*

# **Exhibit 1**



# Clark Law Group

• 205 West Date Street • San Diego, California 92101 •  
• Phone: (619) 239-1321 • Facsimile: (888) 273-4554 •  
• www.clarklawyers.com •

**December 5, 2017**

Transmitted via Online Upload

California Labor and Workforce Development Agency  
ATTN: PAGA Administrator  
1515 Clay Street, Suite 801  
Oakland, CA 94612

**RE: *Jimenez et al. v. California Wireless Solutions, Inc. et al.***

Dear PAGA Administrator,

The purpose of this correspondence is to inform you that Daryl L. Jimenez ("Ms. Jimenez"), on behalf of herself and all others similarly situated, intends to assert the legal rights granted to her by the California Labor Code, Private Attorneys General Act of 2004 (the "ACT"), as set forth in California Labor Code section 2698 et seq. The correspondence serves to satisfy the notice requirements of the ACT, as it includes the current facts and theories to support the alleged Labor Code violations, and will also be sent to California Wireless Solutions, Inc. dba Sprint, Zaid Hamed, Alea L. Ferguson, Sprint Solutions, Inc., Sprint Communications Company L.P. (collectively "Sprint") through their agents for service of process via certified mail. By sending this correspondence Ms. Jimenez is complying with the Act's statutory notice requirement.

### **Factual Statement and Theories of Liability**

Daryl was employed by Sprint from December 2014 to June 2017 in a non-exempt capacity. During her tenure with Sprint she worked as a sales representative, a sales lead, and a Store Manager (in Training) at about five (5) different locations in the Bay area.

Ms. Jimenez asserts that she and other current or former hourly non-exempt employees of Sprint, including but not limited to sales representatives, sales leads, and store managers, were subject to the same policies, procedures, guidelines, and practices described herein.

Ms. Jimenez further alleges that she and other current or former hourly non-exempt employees of Sprint, including but not limited to sales representatives, sales leads, and store managers, suffered, and continue to suffer, the same or similar violations described herein while employed by Sprint.

Any and all claims alleged in this correspondence are asserted on behalf of Ms. Jimenez and all current or former hourly non-exempt employees of Sprint in California who have suffered the same or similar violations alleged herein, as well as other violations that may be later discovered that arise out of their employment with Sprint.

Furthermore, Ms. Jimenez reserves her right to assert any other related claims and/or theories on behalf of herself and those she seeks to represent against Sprint and/or other persons discovered after the sending of this correspondence, since investigation and discovery are ongoing.

**I. Sprint Failed to Pay Minimum Wages and Overtime Compensation in Violation of Labor Code §§ 204, 510, 1194, 1197, 1197.1 and 1198**

Labor Code § 204 establishes the fundamental right of all employees in the State of California to be paid wages in a timely fashion for their work. According to Labor Code § 1197 employers are required to pay its employees the fixed minimum wage set by the California Labor Commission. Labor Code § 1198 makes it unlawful to employ persons without compensating them at the rate of pay either time and one half or two times that person's regular rate of pay depending on the number of hours worked. Accordingly, Labor Code § 510 specifies that any work in excess of eight hours in one workday and any work in excess of 40 hours in any one work week, and the first eight hours worked on the seventh day of work in any one work week shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Labor Code § 1194 permits an employee to recover any unpaid balance of the minimum wage or overtime compensation not paid for all hours worked. Labor Code § 1197.1 requires an employer to pay a civil penalty if it causes an employee to be paid a wage less than the fixed minimum wage.

Ms. Jimenez alleges that as a policy, practice, and/or procedure Sprint regularly required her and other non-exempt employees of Sprint to work more than eight hours in a day and/or forty hours in week during their employment with Sprint. In fact, Ms. Jimenez recalls that she and other non-exempt employees worked shifts in excess of 12 hours, typically about 14 hours. Overtime was primarily worked by non-exempt employees to make and/or complete a sale.

**A. Sprint Failed to Pay Minimum Wages and Overtime Compensation Due to Faulty Timekeeping Methods**

Ms. Jimenez contends that she and other non-exempt employees were required by Sprint to clock in and out through a timekeeping system called RQ4, which used finger print scanner that attaches to the individuals work computer. However, due the inadequacy of the computers and/or the timekeeping program(s) used, as the computer(s) and/or program(s) would often run slow

and/or freeze. As a result, the finger print scanner would not capture non-exempt employees in and out times appropriately. Often times an employee was not informed that their scan was not accepted by the system until about 20 minutes after they had engaged in worked related tasks. This error, forced Ms. Jimenez and other non-exempt employees to attempt to clock in and/or out again. Thus, RQ4 did not properly capture all time worked by the non-exempt employees. As a result, Ms. Jimenez and other non-exempt employees were not properly compensated for all time worked.

On a number of occasions Ms. Jimenez, as well as other non-exempt employees, complained about the timekeeping system errors to management and Human Resources, however, to Ms. Jimenez's knowledge Sprint did not do anything to attempt to resolve the issues.

### **B. Sprint Failed to Adequately Pay Employees for All Time Worked**

Ms. Jimenez alleges that Sprint, as a policy, practice, and/or procedure, instructed all non-exempt employees to clock out and continue to work in order to achieve the maximum number of sales. As a result, Sprint failed to adequately pay all non-exempt employees minimum wage and/or applicable overtime compensation for all hours worked in violation of California law.

Ms. Jimenez also alleges that as a policy, procedure and/or practice, Sprint requires all of its non-exempt employees to install a group chat application known as "GroupMe" on their personal cellular devices. Sprint further requires all of its non-exempt employees to periodically check and/or respond to all applicable messages throughout the day, despite whether the non-exempt employee is scheduled to work. Sprint, however, does not pay its non-exempt employees for the time the employees check and/or respond to the messages through the "GroupMe" application, despite being required to do so.

### **C. Sprint Failed to Appropriately Consider Commission in Determining Employee's Overtime Rate**

Ms. Jimenez alleges that as a policy, procedure and/or practice, Sprint failed to use the commissions, non-discretionary bonuses, non-discretionary performance pay, and/or shift differentials to calculate all non-exempt employees regular rate of pay that is to be used to accurately calculate the overtime rate for payment of overtime wages to Ms. Jimenez and other non-exempt employees of Sprint. As a result, Ms. Jimenez and other non-exempt employees were not paid the appropriate overtime rate as required under California law.

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## **II. Sprint Failed to Provide Written Commission Agreements in Violation of Labor Code § 2751**

California Labor Code § 2751(a) provides:

Whenever an employer enters into a contract of employment with an employee for services to be rendered within this state and the contemplated method of payment of the employee involves commissions, the contract shall be in writing and shall set forth the method by which the commissions shall be computed and paid.

Section (b) provides that “the employer shall give a signed copy of the contract to every employee who is a party thereof, and shall obtain a signed receipt of the contract from each employee.”

Ms. Jimenez alleges that all non-exempt employees of Sprint were entitled to receive commissions for sales made as part of their employment with Sprint. However, Ms. Jimenez alleges she and other non-exempt employees were not provided with a contract in writing outlining the method by which the commissions shall be calculated and paid, including details related to “charge backs” and “buy backs.” Since, Sprint failed to enter into a written contract with Ms. Jimenez and all non-exempt employees setting forth the method and calculation of commission payments Sprint violated the Labor Code.

Moreover, Ms. Jimenez alleges that when an employee changes their position within Sprint, often a new commission pay structure was put in place. However, Sprint did not provide a written contract outlining the new methods by which the commissions were computed and paid for the alternative position. As such, Ms. Jimenez asserts that Sprint violated California law by failing to provide her and other non-exempt employees who changed positions within Sprint with written contract outlining the how commissions were to be paid and calculated.

Ms. Jimenez further alleges that she and other non-exempt employees of Sprint did not receive a signed copy of the written documents outlining the method by which the commissions were to be computed and paid, including details related to “charge backs” and “buy backs” for all positions worked. Since, Ms. Jimenez and other non-exempt employees did not receive a signed copy of the written contract setting forth the method by which their commissions were to be computed and paid, including when the structure changed due to position changes, Sprint violated the Labor Code.

Lastly, Ms. Jimenez alleges that she and other non-exempt employees of Sprint were not appropriately paid their commissions, nor where they paid in a timely fashion. For example, on a number of occasions Ms. Jimenez had to complain to Human Resources that her commissions did not appear to be calculated appropriately. Also, on a number of occasions Sprint took about two to three

months to pay commissions to Ms. Jimenez. As a result, Sprint took longer than promised to pay commissions appropriately, in violation of California law.

### **III. Sprint Unlawfully Deducted Wages in Violation of Labor Code §§ 221 and 224**

Labor Code § 221 prevents an employer from taking back any wages from an employee after they are earned. Labor Code § 224 outlines permissible deductions, including deductions for state and federal income taxes, insurance premiums, and welfare or pension plan contributions. However, the Courts have made it clear that the statute reflects “strong public policy favoring the protection of employees’ wages.” See *Ralphs Grocery Co. v. Superior Court* (2003) 112 Cal.App.4th 1090, 1096-1097.

Ms. Jimenez asserts that she and other non-exempt employees of Sprint were to be paid a commission on store sales that were earned upon completion of the sale. However, as explained above Sprint did not provide written contracts outlining the methods by which commissions were to be calculated and paid to its non-exempt employees. Additionally, Ms. Jimenez asserts that Sprint did not provide contracts to its non-exempt employees that contained express provisions related to “charge backs” and “buy backs.” However, Sprint has a policy, procedure and/or practice of deducting “charge backs” and “buy backs” from non-exempt employee’s earned commissions. As such, Sprint willfully and intentionally deducted and retained a portion of its non-exempt employees’ earned commissions in violation of California law.

### **IV. Sprint Secretly Underpaid Wages in Violation of Labor Code § 223**

Labor Code § 223 provides “[w]here any statute or contract requires an employer to maintain the designated wage scale, it shall be unlawful to secretly pay a lower wage while purporting to pay the wage designated by statute to by contract.” The purpose of Labor Code §223 was to address the issue of employers taking secret deductions or “kickbacks” from their employees. *DeLeon v. Verizon Wireless, LLC* (2012) 207 Cal.App.4th 800, 811.

As described herein, Ms. Jimenez and other non-exempt employees were to be paid the agreed upon hourly wage and commissions from store sales. However, as discussed herein, Defendant failed to appropriately consider earned commissions in the determination of the respective employee’s overtime rate. Additionally, Defendant improperly deducted “charge backs” and “buy backs” from the non-exempt employee’s earned commissions. As such, this conduct knowingly permitted Sprint to “secretly” pay a lower wage to its non-exempt employees in violation of Labor Code § 223.

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**V. Sprint Failed to Provide Legally Compliant Meal Periods or Compensation in Lieu Thereof, in Violation of Labor Code §§ 226.7 and 512 and IWC Order #7-2001**

Pursuant to Labor Code § 512, no employer shall employ any person for a work period of more than five (5) hours without providing a meal period of not less than thirty (30) minutes. During this meal period of not less than thirty (30) minutes, the employee is to be completely free of the employer's control and must not perform any work for the employer. If the employee does perform work for the employer during the thirty (30) minute meal period, the employee has not been provided a meal period in accordance with the law. In addition, an employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with another meal period of not less than thirty (30) minutes.

If the employer fails to provide an employee with a meal period, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal period was not provided.

Ms. Jimenez alleges that Sprint, as a policy, practice, and/or procedure, instructed and pressured its non-exempt employees to put sales before all breaks. Additionally, it is the policy, practice, and or procedure of Sprint to understaff its store, and/or have meeting during the work day, which required staffing to be limited. As a result, Ms. Jimenez contends that she and other non-exempt employees of Sprint did not receive full 30-minute duty free meal periods. Ms. Jimenez alleges that she and other non-exempt employees of Sprint often took short or late meal periods as a result of the instruction and pressure from Sprint to complete sales, under staffing, and/or the requirement that leads and/or managers should always be available. Furthermore, Ms. Jimenez alleges that Sprint instructs its non-exempt employees to clock out and work through their meal breaks in order to attempt to make a sale, and/or be readily available for customer assistance, or in the case of leads and store managers be readily available for other employees. Even if Ms. Jimenez and other employees were provided with the opportunity to take a meal period, the breaks were often interrupted by pressure to make a sale, customer or employee assistance, and/or the "GroupMe" messaging system.

Ms. Jimenez also contends that she and other employees were not provided with the opportunity to take a second duty free meal period when they worked more than ten hours for the same reasons described herein.

Ms. Jimenez further asserts that Sprint did not have a procedure or practice for non-exempt employees to report non-compliant meal periods, nor was there a

way to notate in the timekeeping system that they were not receiving legally compliant meal periods. Thus, Ms. Jimenez and other non-exempt employees of Sprint were not paid for non-compliant meal periods as provided under California law.

**VI. Sprint Failed to Provide Legally Compliant Rest Periods or Compensation in Lieu Thereof in Violation of Labor Code § 226.7 and IWC Order #7-2001**

Labor Code § 226.7 requires an employer to pay an employee one (1) additional hour of pay at the employee's regular rate of compensation for each work day that a lawful rest period was not provided.

Ms. Jimenez alleges that Sprint, as a policy, practice, and/or guideline, instructed and pressured its non-exempt employees to put sales before all breaks. Additionally, it is the policy, practice, and or procedure of Sprint to understaff its store, and/or have meeting during the work day, which required staffing to be limited. As a result, Ms. Jimenez and other non-exempt employees did not receive legally compliant rest breaks, as non-exempt employees were either instructed to work through their rest breaks to make a sale or push a sale, and/or they were interrupted during their breaks to either attempt to make a sale or respond to a "GroupMe" message, and/or in the case of leads and managers be readily available for customers and/or other employees.

Ms. Jimenez contends that Sprint did not have a practice or procedure for non-exempt employees to report non-compliant rest periods, nor was there a way to notate in the timekeeping system that they were not receiving legally compliant rest periods. As a result, Ms. Jimenez and other non-exempt employees of Sprint were not paid for non-compliant rest periods as required under California law.

**VII. Sprint Failed to Reimburse Non-Exempt Employees for Work Expenses in Violation of Labor Code §§ 2800 and 2802.**

Pursuant to Labor Code § 2800 an employer shall indemnify employee losses caused by the employer's want of ordinary care. Accordingly, Labor Code § 2802 provides that an employer shall indemnify his/her employee for all necessary expenditures or losses incurred by the employees as a result of employment. Further, an employer shall not collect or receive from an employee any part of wages theretofore paid by employer to employee.

As discussed herein, Ms. Jimenez alleges that as a policy, procedure and/or practice, Sprint requires all of its non-exempt employees to install a group chat application known as "GroupMe" on their personal cellular devices. However, Sprint does not reimburse its non-exempt employees a reasonable percentage of their personal cellular bill and/or cost of device for the installation, space, and/or use of the "GroupMe" application on their personal cellular devices,

despite being required to install and use the application for work related purposes. As such, Sprint violated the Labor Code by failing to reimburse Ms. Jimenez and other non-exempt employees for work expenses.

#### **VIII. Sprint Failed to Pay Wages Owed Upon Termination in Violation of Labor Code §§ 201-203**

Pursuant to Labor Code § 201, if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Labor Code § 202(a) provides that if an employee does not have a written contract for a definite period and quits his or her employment, the employee's wages are due and payable no later than 72 hours thereafter, unless the employee has given 72-hours previous notice of his/her intention to quit, then the employee is entitled to his/her wages at the time of quitting. If an employer willfully fails to pay an employee in accordance to Labor Code §§ 201 and 202, then the employee's wages shall continue as a penalty from the due date thereof at the same rate until paid or until an action is commenced, however, the wages shall not continue for more than thirty (30) days.

As discussed here, Sprint failed to pay its non-exempt employees for all time worked, and improperly calculated over time, and improperly deducted earned wages in violation of California Law. As a result, Sprint willfully failed to pay, in a timely manner wages owed to former non-exempt employees who separated from Sprint within the statutory period.

Additionally, Ms. Jimenez asserts that as a policy and practice Sprint does not pay its separated employees according to California law, as she and other non-exempt employees were not paid their final wages on time upon separation. For example, Sprint stated that Ms. Jimenez "voluntarily quit" after she was absent from work due to an illness and had a note from her doctor. However, Sprint did not pay Ms. Jimenez her final wages for about six months. Additionally, as of the date of this communication, Sprint has not paid Ms. Jimenez her final earned commissions. Ms. Jimenez is informed and believes that Sprint's practice is to hold final wages for about six months before disbursement. This practice is contrary to California Law.

#### **IX. Sprint Failed to Timely Furnish Legally Compliant Wage Statements in Violation of Labor Code § 226**

Section 226(a) of the Labor Code requires that Sprint provide accurate and itemized wage statements to its employees. Specifically, Labor Code § 226(a) requires that each wage statement show "(1) gross wages earned, (2) total hours worked by the employee... (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the

employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than the social security number, (8) the name and address of the legal entity that is the employer...(9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate and the corresponding number of hours worked at each hourly rate by the employee..."

Labor Code § 226(b) further requires the employee to keep the information required by Labor Code § 226(a) and afford current and former employees the right to inspect or copy records pertaining to their employment.

Sprint knowingly and intentionally failed to comply with Labor Code § 226 on each and every wage statement provided to Ms. Jimenez and other non-exempt employees. Ms. Jimenez alleges that the wage statements provided by Sprint did not accurately include the following: (1) the gross wage earned; (2) the net wages earned; (3) the total hours worked; (4) all deductions; (5) all commissions earned; because as described herein, Sprint failed to (a) properly compensate all non-exempt employees for all time worked, (b) properly calculate each non-exempt employee's overtime rate; (c) properly compensate all non-exempt employees for non-compliant meal periods; (d) properly compensate all non-exempt employees for non-compliant rest periods. Sprint also improperly deducted wages and underpaid its non-exempt employees. As such, the wage statements provided to non-exempt employees were inaccurate in violation of Labor Code § 226.

Additionally, pursuant to Sprint's policy, practice and/or procedure of not permitting non-exempt employees to record their actual time worked, as described herein, Sprint knowingly and intentionally failed to keep accurate records of the total hours worked for all non-exempt employees.

Moreover, Sprint knowingly and intentionally failed to accurately itemize the total hours worked and their various rates of pay on non-exempt employee wage statements. As a result, information listed on non-exempt employee wage statements were inaccurate in violation of Labor Code § 226. Sprint also failed to include the employee's name and the last four digits of their social security number and/or employee identification number on each of the wage statements provided to all non-exempt employees in violation of Labor Code § 226.

The wage statements provided by Sprint also did not properly include the pay period information for each wage statement, the accurate rate of pay for the various types of work, nor did the wage statements include the name and address of the legal entity that employed Ms. Jimenez and other non-exempt

employees in violation of Labor Code § 226.

During the statutory period, Sprint knowingly and intentionally failed to abide by the requirements outlined in Labor Code § 226 by failing to maintain records and providing incomplete and inaccurate wage statements to all its non-exempt employees.

**X. Sprint Failed to Maintain Accurate Payroll Records in Violation of California Labor Code §§ 226 and 1174**

Labor Code § 1174(d) states “[e]very person employing labor in this state shall keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by commission, but in case shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.” Labor Code § 226(b) further requires the employer to keep the information required by Labor Code § 226(a) and afford current and former employees the right to inspect or copy records pertaining to their employment.

As described herein, Sprint has a policy, practice, and/or procedure of intentionally and willfully failing to maintain accurate payroll records properly showing the total hours worked each day and the wages paid Ms. Jimenez and all other non-exempt employees. As a result, Sprint failed to maintain records of the daily time worked, the wage paid to its employees, the total hours worked, the employees’ net wages earned, the employees’ gross wages earned, all applicable rates of pay, all deductions, and all commissions in violation of Labor Code §§ 226 and 1174.

**XI. Ms. Jimenez May Be Entitled to Attorneys’ Fees and Costs**

Ms. Jimenez further contends that the Labor Code entitles her, as a private attorney general, to recover civil penalties on behalf of herself and all other aggrieved employees, as well as attorneys’ fees and costs. More specifically, because Ms. Jimenez alleges that Sprint’s conduct violates provisions of the Labor Code that are expressly enumerated under Labor Code § 2699.5, the Act establishes a default civil penalty and a private right of action for Ms. Jimenez, as an aggrieved employee, to bring a civil action to enforce those provisions. Pursuant to Labor Code § 2699(g)(1), if Ms. Jimenez or another similar representative prevails in such an action, she is entitled to an award of reasonable attorneys’ fees and costs.

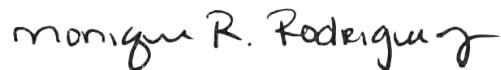
## Conclusion

As described herein, Ms. Jimenez is an “aggrieved employee” as defined by Labor Code § 2699(c). Sprint deprived Ms. Jimenez and other current and former hourly non-exempt employees of their statutory rights in violation of the California Labor Code and relevant IWC Wage Orders, as described herein. As such, Ms. Jimenez has satisfied the prerequisites to serve as a representative of the general public in order to enforce California labor laws and seek penalties for the provisions described herein, or those later discovered.

If after sixty-five (65) days from the date listed on this correspondence, the Labor and Workforce Development Agency does not act, or declines to intervene, Ms. Jimenez may elect to initiate and/or amend a civil action to include the allegations described herein and/or those discovered after the sending of this correspondence, subject to Labor Code § 2698 et seq., as well as other related claims on behalf of herself and all others similarly situated.

Sincerely,

CLARK LAW GROUP



R. Craig Clark  
Jessica R. Corrales  
Monique R. Rodriguez

CC: *Via Certified Mail*

California Wireless  
Solutions, Inc.  
c/o Alea Lashawn  
Ferguson  
3675 Cadwallader Ave.  
San Jose, CA 95121

Sprint Solutions, Inc.  
c/o CSC – Lawyers  
Incorporating Service  
2710 Gateway Oaks Drive,  
Suite 150N  
Sacramento, CA 95833

Sprint Communications  
Company, L.P.  
c/o The Prentice-Hall  
Corporation System, Inc.  
2710 Gateway Oaks Drive,  
Suite 150N  
Sacramento, CA 95833

Alea Lashawn Ferguson  
3675 Cadwallader Ave.  
San Jose, CA 95121

Zaid Hamed  
3675 Cadwallader Ave.  
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# **Exhibit 2**



# Clark Law Group

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January 17, 2018

Transmitted via Online Upload

California Labor and Workforce Development Agency  
ATTN: PAGA Administrator  
1515 Clay Street, Suite 801  
Oakland, CA 94612

**RE: *Jimenez et al. v. California Wireless Solutions, Inc. et al.*  
LWDA-CM-387063-17**

Dear PAGA Administrator,

The purpose of this correspondence is to inform you that Daryl L. Jimenez ("Ms. Jimenez") and Abel Arriola ("Mr. Arriola") (collectively the "Aggrieved Employees"), on behalf of themselves and all others similarly situated, intend to assert their legal rights granted to them by the California Labor Code, Private Attorneys General Act of 2004 (the "ACT"), as set forth in California Labor Code section 2698 et seq. This amended correspondence serves to satisfy the notice requirements of the ACT, as it includes the current facts and theories to support the alleged Labor Code violations, and will also be sent to California Wireless Solutions, Inc. dba Sprint, Zaid Hamed, Alea L. Ferguson, Sprint Solutions, Inc., Sprint Communications Company L.P. (collectively "Sprint") through their agents for service of process via certified mail. By sending this correspondence the Aggrieved Employees are complying with the Act's statutory notice requirement.

### **Factual Statement and Theories of Liability**

Ms. Jimenez was employed by Sprint from approximately December 2014 to June 2017 in a non-exempt capacity. During her tenure with Sprint she worked as a sales representative, a sales lead, and a Store Manager (in Training) at about five (5) different locations in the Bay area.

Mr. Arriola was employed by Sprint from approximately September 2016 to February 2017 in a non-exempt capacity. During his time with Spring he worked as a sales representative at Sun Valley Mall in Concord, California.

The Aggrieved Employees assert that they and other current or former hourly non-exempt employees of Sprint, including but not limited to sales representatives, sales leads, and store managers, were subject to the same policies, procedures, guidelines, and practices described herein.



The Aggrieved Employees further allege that they and other current or former hourly non-exempt employees of Sprint, including but not limited to sales representatives, sales leads, and store managers, suffered, and continue to suffer, the same or similar violations described herein while employed by Sprint.

Any and all claims alleged in this correspondence are asserted on behalf of Ms. Jimenez, Mr. Arriola and all current or former hourly non-exempt employees of Sprint in California who have suffered the same or similar violations alleged herein, as well as other violations that may be later discovered that arise out of their employment with Sprint.

Furthermore, the Aggrieved Employees reserve their right to assert any other related claims and/or theories on behalf of themselves and those they seeks to represent against Sprint and/or other persons discovered after the sending of this correspondence, since investigation and discovery are ongoing.

**I. Sprint Failed to Pay Minimum Wages and Overtime Compensation in Violation of Labor Code §§ 204, 510, 1194, 1197, 1197.1 and 1198**

Labor Code § 204 establishes the fundamental right of all employees in the State of California to be paid wages in a timely fashion for their work. According to Labor Code § 1197 employers are required to pay its employees the fixed minimum wage set by the California Labor Commission. Labor Code § 1198 makes it unlawful to employ persons without compensating them at the rate of pay either time and one half or two times that person's regular rate of pay depending on the number of hours worked. Accordingly, Labor Code § 510 specifies that any work in excess of eight hours in one workday and any work in excess of 40 hours in any one work week, and the first eight hours worked on the seventh day of work in any one work week shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Labor Code § 1194 permits an employee to recover any unpaid balance of the minimum wage or overtime compensation not paid for all hours worked. Labor Code § 1197.1 requires an employer to pay a civil penalty if it causes an employee to be paid a wage less than the fixed minimum wage.

The Aggrieved Employees allege that as a policy, practice, and/or procedure Sprint regularly required them and other non-exempt employees of Sprint to work more than eight hours in a day and/or forty hours in week during their employment with Sprint. In fact, the Aggrieved Employees recall that they and other non-exempt employees worked shifts in excess of 12 hours, typically about 14 hours. Overtime was primarily worked by non-exempt employees in order to make and/or complete a sale.

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### **A. Sprint Failed to Pay Minimum Wages and Overtime Compensation Due to Faulty Timekeeping Methods**

The Aggrieved Employees contend that they and other non-exempt employees were required by Sprint to clock in and out through a timekeeping system called RQ4, which used finger print scanner that attaches to the individuals work computer. However, due the inadequacy of the computers and/or the timekeeping program(s) used, as the computer(s) and/or program(s) would often run slow and/or freeze. As a result, the finger print scanner would not capture non-exempt employees in and out times appropriately. Often times a non-exempt employee was not informed that their scan was not accepted by the system until about 20 minutes after they had engaged in worked related tasks. This error, forced the Aggrieved Employees and other non-exempt employees to attempt to clock in and/or out again. This continued to occur despite multiple complaints made (see below). Thus, RQ4 did not properly capture all time worked by the non-exempt employees. As a result, the Aggrieved Employees and other non-exempt employees were not properly compensated for all time worked.

On a number of occasions Ms. Jimenez, as well as other non-exempt employees, complained about the timekeeping system errors to management and Human Resources, however, to Ms. Jimenez's knowledge Sprint did not do anything to attempt to resolve the issues.

### **B. Sprint Failed to Adequately Pay Employees for All Time Worked**

The Aggrieved Employees allege that Sprint, as a policy, practice, and/or procedure, instructed all non-exempt employees to clock out and continue to work in order to achieve the maximum number of sales. As a result, Sprint failed to adequately pay all non-exempt employees minimum wage and/or applicable overtime compensation for all hours worked in violation of California law.

The Aggrieved Employees also allege that as a policy, procedure and/or practice, Sprint requires all of its non-exempt employees to install a group chat application known as "GroupMe" on their personal cellular devices. Sprint further requires all of its non-exempt employees to periodically check and/or respond to all applicable messages throughout the day, despite whether the non-exempt employee is scheduled to work. Sprint, however, does not pay its non-exempt employees for the time the employees check and/or respond to the messages through the "GroupMe" application, despite being required to do so.

### **C. Sprint Failed to Appropriately Consider Commission in Determining Employee's Overtime Rate**

The Aggrieved Employees allege that as a policy, procedure and/or practice, Sprint failed to use the commissions, non-discretionary bonuses, non-discretionary performance pay, and/or shift differentials to calculate all non-exempt employees rate of pay that is to be used to accurately calculate the overtime rate for payment of overtime wages to the Aggrieved Employees and other non-exempt employees of Sprint. As a result, the Aggrieved Employees and other non-

exempt employees were not paid the appropriate overtime rate as required under California law.

## **II. Sprint Failed to Provide Written Commission Agreements in Violation of Labor Code § 2751**

California Labor Code § 2751(a) provides:

Whenever an employer enters into a contract of employment with an employee for services to be rendered within this state and the contemplated method of payment of the employee involves commissions, the contract shall be in writing and shall set forth the method by which the commissions shall be computed and paid.

Section (b) provides that “the employer shall give a signed copy of the contract to every employee who is a party thereof, and shall obtain a signed receipt of the contract from each employee.”

The Aggrieved Employees allege that all non-exempt employees of Sprint were entitled to receive commissions for sales made as part of their employment with Sprint. However, the Aggrieved Employees allege they and other non-exempt employees were not provided with a contract in writing outlining the method by which the commissions shall be calculated and paid, including details related to “charge backs” and “buy backs.” Since, Sprint failed to enter into a written contract with the Aggrieved Employees and all non-exempt employees setting forth the method and calculation of commission payments Sprint violated the Labor Code.

Moreover, Ms. Jimenez asserts that when an employee changes their position within Sprint, often a new commission pay structure was put in place. However, Sprint did not provide a written contract outlining the new methods by which the commissions were computed and paid for the alternative position. As such, Ms. Jimenez asserts that Sprint violated California law by failing to provide her and other non-exempt employees who changed positions within Sprint with written contract outlining the how commissions were to be paid and calculated.

The Aggrieved Employees further allege that they and other non-exempt employees of Sprint did not receive a signed copy of the written documents outlining the method by which the commissions were to be computed and paid, including details related to “charge backs” and “buy backs” for all positions worked. Since, the Aggrieved Employees and other non-exempt employees did not receive a signed copy of the written contract setting forth the method by which their commissions were to be computed and paid, including when the structure changed due to position changes, Sprint violated the Labor Code.

Lastly, the Aggrieved Employees allege that they and other non-exempt employees of Sprint were not appropriately paid their commissions, nor where they paid in a timely fashion. For example, on a number of occasions Ms. Jimenez had to complain to Human Resources that her commissions did not appear to be calculated appropriately. Also, on a number of occasions Sprint took about two

to three months to pay commissions to Ms. Jimenez. The Aggrieved Employees further claim that as of the date of this correspondence they have yet to be paid their final commission payments. As a result, Sprint took longer than promised to pay commissions appropriately in violation of California law.

### **III. Sprint Unlawfully Deducted Wages in Violation of Labor Code §§ 221 and 224**

Labor Code § 221 prevents an employer from taking back any wages from an employee after they are earned. Labor Code § 224 outlines permissible deductions, including deductions for state and federal income taxes, insurance premiums, and welfare or pension plan contributions. However, the Courts have made it clear that the statute reflects “strong public policy favoring the protection of employees’ wages.” See *Ralphs Grocery Co. v. Superior Court* (2003) 112 Cal.App.4th 1090, 1096-1097.

The Aggrieved Employees assert that they and other non-exempt employees of Sprint were to be paid a commission on store sales that were earned upon completion of the sale. However, as explained above Sprint did not provide written contracts outlining the methods by which commissions were to be calculated and paid to its non-exempt employees. Additionally, the Aggrieved Employees claim that Sprint did not provide contracts to its non-exempt employees that contained express provisions related to “charge backs” and “buy backs.” However, Sprint has a policy, procedure and/or practice of unlawfully deducting “charge backs” and “buy backs” from non-exempt employee’s earned commissions. Moreover, the Aggrieved Employees allege that Sprint has a policy, procedure, and/or practice deducting “charge backs” and “buy backs” after the commission is already earned in violation of California law. As such, Sprint willfully and intentionally deducted and retained a portion of its non-exempt employees’ earned commissions in violation of California law.

### **IV. Sprint Secretly Underpaid Wages in Violation of Labor Code § 223**

Labor Code § 223 provides “[w]here any statute or contract requires an employer to maintain the designated wage scale, it shall be unlawful to secretly pay a lower wage while purporting to pay the wage designated by statute or by contract.” The purpose of Labor Code §223 was to address the issue of employers taking secret deductions or “kickbacks” from their employees. *DeLeon v. Verizon Wireless, LLC* (2012) 207 Cal.App.4th 800, 811.

As described herein, the Aggrieved Employees and other non-exempt employees were to be paid the agreed upon hourly wage and commissions from store sales. However, as discussed herein, Sprint failed to appropriately consider earned commissions in the determination of the respective employee’s overtime rate. Additionally, Sprint improperly deducted “charge backs” and “buy backs” from the non-exempt employee’s earned commissions. As such, this conduct knowingly permitted Sprint to “secretly” pay a lower wage to its non-exempt employees in violation of Labor Code § 223.

**V. Sprint Failed to Provide Legally Compliant Meal Periods or Compensation in Lieu Thereof, in Violation of Labor Code §§ 226.7 and 512 and IWC Order #7-2001**

Pursuant to Labor Code § 512, no employer shall employ any person for a work period of more than five (5) hours without providing a meal period of not less than thirty (30) minutes. During this meal period of not less than thirty (30) minutes, the employee is to be completely free of the employer's control and must not perform any work for the employer. If the employee does perform work for the employer during the thirty (30) minute meal period, the employee has not been provided a meal period in accordance with the law. In addition, an employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with another meal period of not less than thirty (30) minutes.

If the employer fails to provide an employee with a meal period, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal period was not provided.

The Aggrieved Employees allege that Sprint, as a policy, practice, and/or procedure, instructed and pressured its non-exempt employees to put sales before all breaks. Additionally, it is the policy, practice, and or procedure of Sprint to understaff its store, and/or have meetings during the work day, which required staffing to be limited. As a result, the Aggrieved Employees contends that they and other non-exempt employees of Sprint did not receive full 30-minute duty free meal periods. The Aggrieved Employees allege that they and other non-exempt employees of Sprint often took short or late meal periods as a result of the instruction and pressure from Sprint to complete sales, under staffing, and/or the requirement that leads and/or managers should always be available. Furthermore, the Aggrieved Employees assert that Sprint instructs its non-exempt employees to clock out and work through their meal breaks in order to attempt to make a sale, and/or be readily available for customer assistance, or in the case of leads and store managers be readily available for other employees. This pressure was often coupled with threats of termination and suspension from district managers. Even if the Aggrieved Employees and other non-exempt employees were provided with the opportunity to take a meal period, the breaks were often interrupted by pressure to make a sale, customer or employee assistance, and/or the "GroupMe" messaging system.

The Aggrieved Employees also contend that they and other employees were not provided with the opportunity to take a second duty free meal period when they worked more than ten hours for the same reasons described herein.

The Aggrieved Employees further assert that Sprint did not have a procedure or practice for non-exempt employees to report non-compliant meal periods, nor was there a way to notate in the timekeeping system that they were not receiving legally compliant meal periods. Thus, the Aggrieved Employees and other non-

exempt employees of Sprint were not paid for non-compliant meal periods as provided under California law.

**VI. Sprint Failed to Provide Legally Compliant Rest Periods or Compensation in Lieu Thereof in Violation of Labor Code § 226.7 and IWC Order #7-2001**

Labor Code § 226.7 requires an employer to pay an employee one (1) additional hour of pay at the employee's regular rate of compensation for each work day that a lawful rest period was not provided.

The Aggrieved Employees allege that Sprint, as a policy, practice, and/or guideline, instructed and pressured its non-exempt employees to put sales before all breaks. Additionally, it is the policy, practice, and or procedure of Sprint to understaff its store, and/or have meeting during the work day, which required staffing to be limited. As a result, the Aggrieved employees and other non-exempt employees did not receive legally compliant rest breaks, as non-exempt employees were either instructed to work through their rest breaks to make a sale or push a sale, and/or they were interrupted during their breaks to either attempt to make a sale or respond to a "GroupMe" message, and/or in the case of leads and managers be readily available for customers and/or other employees. In fact, district managers often threatened non-exempt employees with suspension or termination if they did not work through their rest breaks to "make a sale."

The Aggrieved Employees contend that Sprint did not have a practice or procedure for non-exempt employees to report non-compliant rest periods, nor was there a way to notate in the timekeeping system that they were not receiving legally compliant rest periods. As a result, the Aggrieved Employees and other non-exempt employees of Sprint were not paid for non-compliant rest periods as required under California law.

**VII. Sprint Failed to Reimburse Non-Exempt Employees for Work Expenses in Violation of Labor Code §§ 2800 and 2802.**

Pursuant to Labor Code § 2800 an employer shall indemnify employee losses caused by the employer's want of ordinary care. Accordingly, Labor Code § 2802 provides that an employer shall indemnify his/her employee for all necessary expenditures or losses incurred by the employees as a result of employment. Further, an employer shall not collect or receive from an employee any part of wages theretofore paid by employer to employee.

As discussed herein, the Aggrieved Employees assert that as a policy, procedure and/or practice, Sprint requires all of its non-exempt employees to install a group chat application known as "GroupMe" on their personal cellular devices. However, Sprint does not reimburse its non-exempt employees a reasonable percentage of their personal cellular bill and/or cost of device for the installation, space, and/or use of the "GroupMe" application on their personal cellular devices, despite being required to install and use the application for work related purposes. As such, Sprint violated the Labor Code by failing to reimburse the

Aggrieved Employees and other non-exempt employees for necessary work expenses.

#### **VIII. Sprint Failed to Pay Wages Owed Upon Termination in Violation of Labor Code §§ 201-203**

Pursuant to Labor Code § 201, if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Labor Code § 202(a) provides that if an employee does not have a written contract for a definite period and quits his or her employment, the employee's wages are due and payable no later than 72 hours thereafter, unless the employee has given 72-hours previous notice of his/her intention to quit, then the employee is entitled to his/her wages at the time of quitting. If an employer willfully fails to pay an employee in accordance to Labor Code §§ 201 and 202, then the employee's wages shall continue as a penalty from the due date thereof at the same rate until paid or until an action is commenced, however, the wages shall not continue for more than thirty (30) days.

As discussed here, Sprint failed to pay its non-exempt employees for all time worked, and improperly calculated over time, and improperly deducted earned wages in violation of California Law. As a result, Sprint willfully failed to pay, in a timely manner wages owed to former non-exempt employees who separated from Sprint within the statutory period, included the Aggrieved Employees.

Additionally, the Aggrieved Employees assert that as a policy and practice of Sprint does not pay its separated employees according to California law, as they and other non-exempt employees were not paid their final wages on time upon separation. For example, Sprint stated that Ms. Jimenez "voluntarily quit" after she was absent from work due to an illness and had a note from her doctor. However, Sprint did not pay Ms. Jimenez her final wages for about six months. Additionally, as of the date of this communication, Sprint has not paid the Aggrieved Employees their final earned commissions. The Aggrieved Employees are informed and believe that Sprint's practice is to hold final wages for about six months before disbursement. This practice is clearly contrary to California Law.

#### **IX. Sprint Failed to Timely Furnish Legally Compliant Wage Statements in Violation of Labor Code § 226**

Section 226(a) of the Labor Code requires that Sprint provide accurate and itemized wage statements to its employees. Specifically, Labor Code § 226(a) requires that each wage statement show "(1) gross wages earned, (2) total hours worked by the employee... (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than the social security number, (8) the

name and address of the legal entity that is the employer...(9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate and the corresponding number of hours worked at each hourly rate by the employee..."

Labor Code § 226(b) further requires the employer to keep the information required by Labor Code § 226(a) and afford current and former employees the right to inspect or copy records pertaining to their employment.

Sprint knowingly and intentionally failed to comply with Labor Code § 226 on each and every wage statement provided to the Aggrieved Employees and other non-exempt employees. The Aggrieved Employees allege that the wage statements provided by Sprint did not accurately include the following: (1) the gross wage earned; (2) the net wages earned; (3) the total hours worked; (4) all deductions; (5) all commissions earned; because as described herein, Sprint failed to (a) properly compensate all non-exempt employees for all time worked, (b) properly calculate each non-exempt employee's overtime rate; (c) properly compensate all non-exempt employees for non-compliant meal periods; (d) properly compensate all non-exempt employees for non-compliant rest periods. Sprint also improperly deducted wages and underpaid its non-exempt employees. As such, the wage statements provided to non-exempt employees were inaccurate in violation of Labor Code § 226.

Additionally, pursuant to Sprint's policy, practice and/or procedure of not permitting non-exempt employees to record their actual time worked, as described herein, Sprint knowingly and intentionally failed to keep accurate records of the total hours worked for all non-exempt employees, including the Aggrieved Employees.

Moreover, Sprint knowingly and intentionally failed to accurately itemize the total hours worked and their various rates of pay on non-exempt employee wage statements. As a result, information listed on non-exempt employee wage statements were inaccurate in violation of Labor Code § 226. Sprint also failed to include the employee's name and the last four digits of their social security number and/or employee identification number on each of the wage statements provided to all non-exempt employees in violation of Labor Code § 226.

The wage statements provided by Sprint also did not properly include the pay period information for each wage statement, the accurate rate of pay for the various types of work, nor did the wage statements include the name and address of the legal entity that employed the Aggrieved Employees and other non-exempt employees in violation of Labor Code § 226.

During the statutory period, Sprint knowingly and intentionally failed to abide by the requirements outlined in Labor Code § 226 by failing to maintain records and providing incomplete and inaccurate wage statements to all its non-exempt employees, including the Aggrieved Employees.



**X. Sprint Failed to Maintain Accurate Payroll Records in Violation of California Labor Code §§ 226 and 1174**

Labor Code § 1174(d) states “[e]very person employing labor in this state shall keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by commission, but in case shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.” Labor Code § 226(b) further requires the employer to keep the information required by Labor Code § 226(a) and afford current and former employees the right to inspect or copy records pertaining to their employment.

As described herein, Sprint has a policy, practice, and/or procedure of intentionally and willfully failing to maintain accurate payroll records properly showing the total hours worked each day and the wages paid the Aggrieved Employees and all other current and former non-exempt employees. As a result, Sprint failed to maintain records of the daily time worked, the wage paid to its employees, the total hours worked, the employees’ net wages earned, the employees’ gross wages earned, all applicable rates of pay, all deductions, and all commissions in violation of Labor Code §§ 226 and 1174.

**XI. The Aggrieved Employees May Be Entitled to Attorneys’ Fees and Costs**

The Aggrieved Employees further contend that the Labor Code entitles them, as private attorneys general, to recover civil penalties on behalf of themselves and all other current and former aggrieved employees, as well as attorneys’ fees and costs. More specifically, because the Aggrieved Employees allege that Sprint’s conduct violates provisions of the Labor Code that are expressly enumerated under Labor Code § 2699.5, the Act establishes a default civil penalty and a private right of action for the Aggrieved Employees, as an aggrieved employee, to bring a civil action to enforce those provisions. Pursuant to Labor Code § 2699(g)(1), if the Aggrieved Employees or another similar representative prevails in such an action, they are entitled to an award of reasonable attorneys’ fees and costs.

**Conclusion**


As described herein, the Aggrieved Employees are “aggrieved employee” as defined by Labor Code § 2699(c). Sprint deprived the Aggrieved Employees and other current and former hourly non-exempt employees of their statutory rights in violation of the California Labor Code and relevant IWC Wage Orders, as described herein. As such, the Aggrieved Employees have satisfied the prerequisites to serve as a representative of the general public in order to enforce

California labor laws and seek penalties for the provisions described herein, or those later discovered.

If after sixty-five (65) days from the date listed on this correspondence, the Labor and Workforce Development Agency does not act, or declines to intervene, the Aggrieved Employees may elect to initiate and/or amend a civil action to include the persons and allegations described herein and/or those discovered after the sending of this correspondence, subject to Labor Code § 2698 et seq., as well as other related claims on behalf of themselves and all others similarly situated.

Sincerely,

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CC: *Via Certified Mail*

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