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16 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
17 **FOR THE COUNTY OF ORANGE**

19 HIT MOBILE, INC.,

20 Plaintiff,

21 v.

22 T-MOBILE USA, INC. D/B/A T-MOBILE,

23 Defendant.

Case No.

COMPLAINT

JURY TRIAL DEMANDED

1 **COMPLAINT**

2 Plaintiff HIT Mobile, Inc., (“HIT Mobile” or “Plaintiff”) complaining of Defendant
3 T-Mobile USA, Inc. d/b/a T-Mobile (“T-Mobile” or “Defendant”), alleges the following:

4 **INTRODUCTION**

5 1. HIT Mobile brings this action to recover for T-Mobile’s pattern and practice of
6 predatory business practices that destroyed HIT Mobile’s business as an authorized dealer of mobile
7 services and products, ultimately forcing the principals of HIT Mobile to sell their company at a
8 steep discount after successfully running it for over twelve years.

9 2. Using unethical and unlawful tactics, T-Mobile closed scores of dealer-owned doors
10 across the country, caused thousands of people to lose their jobs, and negatively impacted numerous
11 (primarily lower credit and rural) consumers, locally and throughout the United States. T-Mobile
12 has consistently used fraudulently-induced, coercive, dishonest, and misapplied contracts to cheat
13 its counterparties.

14 3. Private and authorized dealers like HIT Mobile sell wireless products and services.
15 These small- to medium-sized, often family-owned businesses, provide numerous employment
16 opportunities in the communities in which they are located – a high percentage of which are jobs for
17 minorities and persons of color. HIT Mobile’s workforce was 90% diverse, with 50% women in
18 management positions.

19 4. T Mobile touts its pro-diversity positions, but contrary to these representations (and
20 the promises it made to be permitted to merge with Sprint), its post-merger decimation of HIT
21 Mobile’s business has resulted in a disproportionately large loss of jobs held by minorities and
22 persons of color.

23 5. In 2009, T-Mobile engaged HIT Mobile and its principal, Mauro Martinez, as one of
24 three initial dealers in the T-Mobile Preferred Retailer (“TPR”) Latino Program, a program intended
25 to facilitate partnerships with entrepreneurs to open T-Mobile branches in ethnic communities with
26 which they are familiar. As an incentive, T-Mobile promised generous business terms, as well as
27 capital, support, and training.

28

1 6. Those promises – and T-Mobile’s commitment to the Latino community – proved
2 hollow. Within a year of T-Mobile’s initial engagement, it forced HIT Mobile to agree to
3 amendments that eliminated the originally promised business terms.

4 7. T-Mobile forced HIT Mobile into unlawful contracts of adhesion that included
5 unfair, unreasonable, and unconscionable terms which were the product of coercion, fraud, financial
6 distress and inequality. Those contracts (together, the “RSAs”) included:

- 7 a. A November 2009 Retailer Services Agreement with T-Mobile (the
8 “November 2009 RSA”);
- 9 b. A November 2010 Retailer Services Agreement for the Los Angeles area
10 (the “November 2010 RSA”);
- 11 c. A January 2011 Retailer Services Agreement the San Diego area (the
12 “January 2011 RSA”); and
- 13 d. A May 2020 Amendment to the Retailer Services Agreement with T-
14 Mobile (the “2020 RSA Amendment”).

15 8. Particularly with respect to the 2020 RSA Amendment, HIT Mobile faced financial
16 devastation if it did not agree to T-Mobile’s take-it-or-leave-it changes to contractual terms.
17 Because the T-Mobile contracts included harsh non-competition clauses, HIT Mobile lacked the
18 ability to go to another carrier and continue operations. HIT Mobile, like all dealers faced
19 significant, recurring monthly expenses for lease payments, payroll, taxes, and debt service, so it
20 could not afford to forego the income from selling wireless services and products. In HIT Mobile’s
21 case, these recurring payments amounted to approximately \$2.8 million to \$3.5 million per month.

22 9. Between 2016 and 2019, T-Mobile forced HIT Mobile to build out and acquire
23 dozens of new store locations at HIT Mobile’s own expense, requiring HIT Mobile to take on
24 considerable debt. However, after its merger with Sprint, T-Mobile did an abrupt about-face and
25 forced HIT Mobile to close some of its most profitable locations.

26 10. Especially following T-Mobile’s merger with Sprint, T-Mobile unlawfully
27 weaponized the commercial relationship and abused the putative commercial terms it imposed to
28

1 suppress HIT Mobile, impede its success, and force the closures of a disproportionately high
2 number of HIT Mobile locations.

3 11. T-Mobile concealed material facts regarding its devastating intentions from dealers
4 such as HIT Mobile, and these frauds induced the alleged contractual relationships that T-Mobile
5 then abused. For instance, T-Mobile knew T-Mobile and other dealers would resist expanding door
6 locations or signing any amendments to the Retailer Services Agreements after the merger if they
7 knew T-Mobile would quickly close the majority of their stores, so T-Mobile concealed its plans to
8 close stores, publicly representing that the merger would result in an increase in stores.

9 12. T-Mobile employed these mechanisms (via the guise of exercising its purported
10 rights under the fraudulently-obtained RSAs) to carry out its ultimate scheme of financially
11 crippling HIT Mobile — and numerous other previously-thriving T-Mobile dealers — to such an
12 extent that HIT Mobile was forced to sell its devalued, remaining business to one of T-Mobile's
13 preferred dealers in November 2021 at a significant discount, resulting in losses over \$60 million.

14 13. Further, HIT Mobile was in a mislabeled and fraudulently-disclaimed franchise
15 relationship with T-Mobile, who unlawfully terminated that franchise relationship. T-Mobile has
16 acted unlawfully under franchise law.

17 14. Before bringing this case, HIT Mobile served a notice of dispute on T-Mobile and
18 tried to resolve these issues without resorting to filing this Complaint. T-Mobile offered only
19 conclusory rejections of HIT Mobile's valid concerns and refused to negotiate a reasonable
20 resolution in good faith. Accordingly, HIT Mobile has no choice but to bring an action to obtain
21 redress for the wrongs T-Mobile inflicted via its predatory and anti-competitive conduct.

22 **PARTIES, VENUE, and JURISDICTION**

23 15. Plaintiff HIT Mobile is a corporation organized and existing under the laws of
24 California and with a principal place of business in Costa Mesa, California.

25 16. Defendant T-Mobile is a corporation organized and existing under the laws of
26 Delaware, with its headquarters in Bellevue, Washington.

27 17. Under California Code of Civil Procedure §§ 395(a) and 395.5, venue is proper in
28 the above-entitled court because a substantial portion of the transactions, acts, and omissions giving

1 rise to the causes of action in this Complaint occurred or arose in Orange County, California, and
2 Defendants conduct business in this County and throughout the State of California.

3 **CHOICE OF LAW**

4 18. The Agreements provide for a Washington state choice of law. But those
5 Agreements should be set aside as fraudulent and otherwise unlawfully and coercively induced. HIT
6 Mobile, therefore, is not bound by the Washington choice of law provision and brings appropriate
7 claims under California.

8 19. Because T-Mobile attempted to impose Washington law in the documents it drafted,
9 however, T-Mobile is estopped from refusing application of Washington law where it is more
10 favorable to HIT Mobile. Accordingly, HIT Mobile also brings claims, directly or in the alternative,
11 under Washington law.

12 **FACTUAL BACKGROUND**

13 **A. Founding of HIT Mobile and Establishment of HIT Mobile's Relationship with T-** 14 **Mobile.**

15 20. In 2009, T-Mobile developed a program known as the TPR Latino Program, which
16 was designed to grow T-Mobile's Hispanic market distribution by partnering with Hispanic
17 entrepreneurs to target locations with a 60% or higher Hispanic population.

18 21. T-Mobile engaged HIT Mobile and its principal, Mauro Martinez, as one of three
19 initial dealers in the TPR Latino Program.

20 22. The initial 2009 RSA between HIT Mobile and T-Mobile was an exclusive
21 agreement that provided for higher compensation and higher residuals for HIT Mobile, set at either
22 10%, 13%, or 15% of a new subscriber's monthly rate plan, depending on HIT Mobile's
23 performance for the month. Residuals give dealers a steady source of income throughout the life of
24 the customer's subscription.

25 23. HIT Mobile excelled in the TPR Latino Program and exceeded projected
26 expectations.

27 24. However, one year after HIT Mobile began participating in the TPR Latino Program,
28 T-Mobile forced HIT Mobile to enter into a new agreement, the November 2010 RSA, which

1 radically changed the TPR Latino Program contract terms to provide for a less favorable
2 compensation structure that aligned HIT Mobile with other T-Mobile dealers who were not part of
3 the program.

4 25. The November 2010 RSA provided for lower residuals for HIT Mobile, set at 6% per
5 month. Instead, T-Mobile offered a monthly spiff – or immediate bonus – depending on
6 performance. But these monthly spiffs came nowhere close to making up for the loss caused by the
7 decreased residual. In fact, T-Mobile designed the spiffs knowing that the highest payouts would be
8 impossible for HIT Mobile to achieve.

9 26. Because HIT Mobile was new to the business, with a small number of stores, it had
10 unequal bargaining power with T-Mobile and was forced to accept these new, unfavorable terms. T-
11 Mobile's unilateral residual compensation change resulted in a loss of millions in anticipated
12 revenue for HIT Mobile.

13 27. For the next several years, HIT Mobile continued to thrive and excel, performing
14 better on average than the corporate general market stores that T-Mobile began opening near HIT
15 Mobile's highest-performing doors up to within a one-mile radius.

16 **B. T-Mobile Forces HIT Mobile to Expand Its Business Model and Open New Doors**
17 **While Incurring Substantial Debt and Lowering HIT Mobile's Compensation.**

18 28. In 2016, T-Mobile approached HIT Mobile regarding its plan to build over 1200
19 stores nationwide.

20 29. T-Mobile represented that it needed HIT Mobile – which at the time had 25 store
21 locations in operation – to open at least 12 new store locations in 2017 alone. T-Mobile further
22 represented that HIT Mobile would receive Capital Expenditure (“Capex”) spend if HIT Mobile met
23 T-Mobile's goal of opening 12 new store locations. T-Mobile made clear that this expansion was
24 not optional, T-Mobile was only interested in working with dealers with scale.

25 30. In compliance with T-Mobile's request, HIT Mobile invested over \$1.36 million
26 dollars in building out new store locations, representing approximately 25% of HIT Mobile's annual
27 profits at the time.

28

1 31. Nonetheless, T-Mobile then threatened HIT Mobile that, if it did not meet the goal of
2 opening all 12 new store locations by the end of 2017, T-Mobile would not receive *any* funding for
3 these new locations.

4 32. Between 2016 and 2018, T-Mobile made additional, unilateral changes to HIT
5 Mobile's compensation structure, including changing HIT Mobile from a guaranteed spiff to a
6 variable, performance-based spiff and unilaterally changing HIT Mobile's accessory compensation
7 structure.

8 **C. T-Mobile Misrepresents and Conceals Post-Merger Plans.**

9 33. T-Mobile knew that it planned to acquire Sprint but concealed its true intent from
10 HIT Mobile and repeatedly encouraged HIT Mobile to open and acquire new stores.

11 34. T-Mobile made these misrepresentations and concealments to protect T-Mobile's
12 position in the merger as well as profit T-Mobile and its executives in the coming merger based on
13 the growth induced by its misrepresentations and concealments.

14 35. HIT Mobile followed T-Mobile's instructions and continued opening new locations,
15 particularly those in majority-Hispanic populations. T-Mobile knew that its repeated urging that
16 HIT Mobile (and other T-Mobile dealers) continue growing and opening new stores would benefit
17 T-Mobile and its executives in the upcoming merger, but would ultimately harm dealers like HIT
18 Mobile.

19 36. The merger between Sprint and T-Mobile was announced in April 2018. But
20 regulatory approval was not assured.

21 37. To obtain the necessary approvals from the Department of Justice and regulatory
22 agencies, T-Mobile made broad, sweeping promises to the government and to the public that the
23 merger would increase competition for consumers, result in the opening of new stores, and create
24 approximately 100,000 new jobs.

25 38. Among other public appearances to promote the merger, Sprint's CEO Marcelo
26 Claude and T-Mobile's CEO John Legere jointly appeared on CNBC's "Squawk on the Street"
27 program on April 30, 2018. During that joint appearance, they stated that the new proposed merger
28

1 would create thousands of jobs and would result in hundreds and hundreds of new stores being
2 opened.

3 39. During an October 2018 T-Mobile Town Hall meeting, Mr. Legere stated that “The
4 New T-Mobile will open **600 new stores to serve rural areas and small towns**” (emphasis in
5 original) and that “we will offer a job with the New T-Mobile to every single employee of T-Mobile
6 and Sprint working in one of our retail stores” following the merger during an April 4, 2019 posting
7 to T-Mobile’s website.

8 40. Messrs. Claire and Legere made these statements to induce HIT Mobile and other
9 dealers to not oppose the merger or request that appropriate regulators deny or contest the merger.
10 They intended that HIT Mobile would rely on these representations in executing post-merger
11 agreements with T-Mobile so they could complete their merger and enrich themselves.

12 41. Messrs. Claire and Legere also intended that Congress rely on these statements, as
13 well as those made in other public appearances and interviews, because they knew the merger
14 would be subject to scrutiny by Congress. In fact, Messrs. Claire and Legere reiterated their claims
15 that the merger would not impact dealers and would result in more stores being opened during joint
16 testimony sessions to Congress on June 27, 2018 and February 19, 2019.

17 42. In early 2019, T-Mobile demanded that HIT Mobile send a joint letter in support of
18 the proposed merger to the California Public Utilities Commission on behalf of all California
19 dealers. The letter, which was ghost written by T-Mobile, stated that the dealers “trust T-Mobile to
20 live up to its word in how it operated and supports its business” and “make our own judgment about
21 where to locate and which company’s products to sell.”

22 43. Based on T-Mobile’s representations, the dealers stated that they would “see ever
23 more growth following T-Mobile’s planned merger with Sprint.”

24 44. Because T-Mobile never intended to honor the representations it made to the dealers
25 who submitted the letter, it tricked the dealers into making assurances to the California Public
26 Utilities Commission that proved untrue.

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1 **D. T-Mobile Pressures HIT Mobile to Rapidly Expand and Acquire Other Dealers.**

2 45. Believing T-Mobile's representations about continued growth, HIT Mobile followed
3 T-Mobile's advice to open and acquire new stores.

4 46. In February 2018 at T-Mobile's urging, HIT Mobile took on \$11.4 million in debt to
5 acquire MFM, LLC, another T-Mobile authorized dealer with more than 30 stores. With the
6 acquisition, HIT Mobile received MFM's residual base of 6% of the customer base for sixty
7 months.

8 47. After its acquisition of MFM, HIT Mobile had 61 stores, and HIT Mobile's business
9 was valued at approximately \$60 million, including \$12 million in earnings before interest, taxes,
10 depreciation, and amortization ("EBITDA").

11 48. In October 2018, HIT Mobile began exploring an acquisition of InTouch, another T-
12 Mobile authorized dealer. During that time, an executive at HIT Mobile received a call from a T-
13 Mobile representative who pressured HIT Mobile into finalizing the acquisition and indicated that if
14 HIT Mobile was unable to complete the acquisition by December 1, 2018, T-Mobile would refuse
15 to approve the deal in early 2019. The T-Mobile representative further indicated that he was
16 adamant about the deal closing by December 1, 2018 because T-Mobile wanted HIT mobile to
17 manage InTouch's business as quickly as possible.

18 49. In or around November 2018, T-Mobile's Dealer Financial Service Asked for HIT
19 Mobile's financials to review the deal with InTouch. Later that same month, after completing the
20 Dealer Financial Services review and running a pro forma with both businesses, T-Mobile formally
21 approved the deal, which closed on December 1, 2018. Following the InTouch acquisition, HIT
22 Mobile had 83 stores.

23 50. To acquire InTouch, HIT Mobile leveraged its business again and incurred a total
24 debt of approximately \$21 million, with \$18 million in EBITDA. HIT Mobile expected a valuation
25 of \$95 million after its acquisition of InTouch. T-Mobile had other plans.

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1 **E. After Pressuring HIT Mobile to Acquire and Build Out New Stores, T-Mobile Again**
2 **Slashes HIT Mobile's Residual Compensation Structure.**

3 51. In February 2019, only three months after HIT Mobile's acquisition of InTouch, T-
4 Mobile informed HIT Mobile via letter agreement that effective July 2019, T-Mobile would once
5 again unilaterally cut HIT Mobile's residual, this time from 6% to 3%.

6 52. T-Mobile's calculated move had a dramatic effect on HIT Mobile's revenue, causing
7 its residuals to plummet by more than \$500,000 a month.

8 53. The harm was amplified by HIT Mobile's recent acquisitions. Had HIT Mobile been
9 made aware of the forthcoming residual cut, it would have significantly impacted the price it paid
10 for MFM and InTouch.

11 54. Despite the fact that major revisions to residuals and other compensation typically
12 require considerable T-Mobile input and discussion over a substantial period of time, when HIT
13 Mobile confronted T-Mobile, T-Mobile represented that it was unaware of the forthcoming residual
14 change when HIT Mobile acquired InTouch just three months prior.

15 55. After learning of the residual cut, HIT Mobile asserted that the 3% residual should
16 apply to new customers only, and that the 6% residual should still apply to preexisting customers
17 activated within the last five years pursuant to the terms of the parties' RSAs. T-Mobile disagreed
18 and unilaterally decided that the new 3% residual should apply to both new and preexisting
19 customers.

20 56. As a result of T-Mobile's abrupt residual cuts (and other misconduct), HIT Mobile
21 was ultimately unable to meet its covenants with its bank, and HIT Mobile's EBITDA decreased
22 from a projected \$18 million to \$12 million annually, and its business valuation plummeted from
23 approximately \$95 million to \$63 million annually (\$35 million after store cuts). T-Mobile knew of
24 the financial impact of its actions because it had requested and received HIT Mobile's financial
25 information.

26 **F. Sprint and T-Mobile Merged, and T-Mobile Engaged in a Pattern and Practice of**
27 **Anti-Competitive Behavior to Destroy HIT Mobile.**

28 57. T-Mobile and Sprint finalized their merger on April 1, 2020.

1 58. Shortly after the Sprint-T-Mobile merger, T-Mobile began engaging in a litany of
2 anti-competitive, unfair and deceptive behavior aimed at driving HIT Mobile and retailers out of the
3 marketplace.

4 59. In May 2020, T-Mobile again pressured HIT Mobile to enter into an Amendment to
5 the prior Retailer Services Agreements. HIT Mobile still had three years left on its existing RSA,
6 and it was unfair for T-Mobile to force a new amendment. As it turned out, T-Mobile wanted the
7 Amendment only so it could disadvantage HIT Mobile by misapplying the terms of the new RSA.

8 60. The 2020 RSA included numerous onerous terms, including a provision that T-
9 Mobile has misinterpreted to allow it to impose rounds of store closures for any reason with 120
10 days' notice. The plain language, purpose, and intent of the provision, which refers to closure of "a
11 Location," was to allow for one-off closings of stores that were not performing well or were
12 inconvenient to operate. However, T-Mobile has adopted an untenable and unethical interpretation
13 of the provision, namely, that T-Mobile could make rounds of closures under the provision for
14 T-Mobile's sole benefit. No rational or fair person could interpret the RSAs this way.

15 61. Growth was entirely in the hands of T-Mobile, which gave itself sole discretion to
16 approve or reject new store locations as well as the renewal of any existing store locations. In
17 essence, the provision tied HIT Mobile's future to T-Mobile's commitment to act in good faith and
18 deal fairly with HIT Mobile.

19 62. HIT Mobile had no choice but to accept the new contract. Because of the expansion
20 T-Mobile had demanded, HIT Mobile had taken on significant debt and had exposure on its bank
21 notes that exceeded the term of its existing RSA. T-Mobile told HIT Mobile that, if it did not
22 execute the new contract, it would not renew its existing contract, forcing HIT Mobile into financial
23 ruin.

24 63. On or about October 6, 2020 representatives from T-Mobile met with HIT Mobile to
25 present T-Mobile's post-merger dealer strategy as it pertained to HIT Mobile. In the presentation,
26 T-Mobile announced it would close 15 of HIT Mobile's 83 store locations. Those 15 stores were
27 high-performing locations that represented nearly 50 percent of HIT Mobile's net income. HIT
28 Mobile was given no input into the future of its business.

1 64. The closures were designed to benefit T-Mobile's corporate stores at the expense of
2 its dealer-owned stores. When T-Mobile decided to close HIT Mobile's high performing store in
3 Long Beach, CA, HIT Mobile asked its account manager for justification. The account manager
4 sent HIT Mobile a text message from his superior showing the ring of T-Mobile corporate stores
5 around HIT Mobile's store, explaining that T-Mobile was closing stores to move traffic to its core,
6 corporate-owned stores.

7 65. As a result of those store closures, HIT Mobile's EBITDA sank to approximately
8 \$7 million, , which is lower than HIT Mobile's initial 2017 EBITDA *before* T-Mobile pressured
9 HIT Mobile to rapidly expand its number of locations and take on over \$21 million in debt relating
10 to the acquisitions of MFM and InTouch. Because of T-Mobile's efforts to reduce compensation
11 and close stores, HIT Mobile's valuation had sunk from a peak of \$95 million to only \$35 million.

12 66. T-Mobile also refused to approve HIT Mobile's requests to acquire new store
13 locations, under the guise of a purported company-wide acquisition freeze. Upon information and
14 belief, however, T-Mobile continued approving substantially similar acquisition requests by T-
15 Mobile-favored retailers and continued opening new T-Mobile-owned corporate stores in close
16 proximity to HIT Mobile's locations.

17 67. Moreover, when the supposed acquisition freeze was over, T-Mobile continued to
18 ignore or push off HIT Mobile's requests for location and acquisition approval, despite continuing
19 to approve acquisitions for favored dealers and opening new T-Mobile-owned corporate stores. In
20 short, T-Mobile not only reduced HIT Mobile's size but also prevented it from recovering while
21 supporting the growth of preferred T-Mobile dealers.

22 68. Finally, T-Mobile inequitably determined chargebacks and took an inordinate
23 amount of time to resolve chargeback issues, which hamstrung HIT Mobile's ability to accurately
24 document/forecast cash flow.

25 69. In short, relying on the RSAs (which it coerced and fraudulently induced HIT
26 Mobile to sign), T-Mobile eliminated HIT Mobile's stores while simultaneously prohibiting HIT
27 Mobile from opening new locations (because T-Mobile withheld its approval) or opening stores for
28 a competing carrier (because the fraudulently induced RSAs prohibited competition in any form).

1 Consistent with its intent and design, T-Mobile’s anti-competitive, unfair, and deceptive conduct
2 also ensured that HIT Mobile’s remaining stores could not operate at the levels they did prior to the
3 merger.

4 70. In other words, HIT Mobile built T-Mobile’s ship for them in the Southern
5 California Hispanic community via a series of expansions and acquisitions, and T-Mobile repaid
6 HIT Mobile by stealing the ship away and leaving HIT Mobile saddled in debt.

7 **G. T-Mobile’s Unlawful Conduct Forced HIT Mobile to Exit a Business in Which it Had**
8 **Flourished For Over 12 Years and to Sign a Punitive and Unenforceable Release.**

9 71. Before they were forced to do business with T-Mobile, HIT Mobile’s principals
10 intended to either maintain HIT Mobile as a closely-held business or to grow the business and sell it
11 for a profit. T-Mobile ruined either path for HIT Mobile’s future.

12 72. Once it became clear that T-Mobile’s actions would make it virtually impossible for
13 HIT Mobile to survive, HIT Mobile had little choice but to exit the marketplace and sell its
14 remaining business.

15 73. Even at this stage, T-Mobile tied HIT Mobile’s hands: HIT Mobile could only sell to
16 T-Mobile-approved buyers. Upon information and belief, T-Mobile encouraged specific buyers to
17 acquire HIT Mobile’s assets by representing they could do so at a far lower price than those assets
18 were worth based on T-Mobile’s conduct towards HIT Mobile.

19 74. HIT Mobile originally had over 7 offers north of \$40 million dollars. But following
20 a meeting of the T-Mobile “Star Council,” a group of top dealers, all but two of the dealers backed
21 out. And the two that remained significantly reduced their offers. HIT Mobile believes and is
22 informed that, during that meeting, T-Mobile warned its favored dealers about upcoming store
23 closures and residual cuts.

24 75. On November 1, 2021, T-Mobile and a buyer (“the Buyer”) executed an Asset
25 Purchase Agreement for HIT Mobile’s Assets (the “APA”).

26 76. T-Mobile approved the APA verbally and by email, and in reliance on these
27 approvals, HIT Mobile made extensive employee terminations or transitions and lease arrangements
28 to comply with its responsibilities and obligations under the APA.

1 77. Less than one week before the buyer was supposed to take over HIT Mobile's
2 business, T-Mobile required HIT Mobile to sign an Assignment and Assumption Agreement (the
3 "Assignment"), which purported to include a putative general release of claims by HIT Mobile.
4 Although HIT Mobile did not want to sign the release – especially after T-Mobile rejected its
5 demand for carve outs – because of the timing, it was left with no choice.

6 78. Because T-Mobile acquired the putative releases in the RSAs and the Assignment
7 through unlawful coercion and duress it imposed on HIT Mobile, it is unenforceable. The terms of
8 the RSAs precluded T-Mobile from unreasonably withholding its consent to the APA based on its
9 desire for a release. T-Mobile waited until the eleventh hour before the closing to demand HIT
10 Mobile sign a putative release, knowing full well that HIT Mobile could not afford to delay the
11 closing while it challenged T-Mobile's improper demand for a release.

12 79. T-Mobile's modus operandi was to (1) first verbally approve dealers' sale of assets,
13 like it did with HIT Mobile, and (2) wait until the last minute to spring the putative release as a
14 condition of T-Mobile's acceptance, at which point T-Mobile knew HIT Mobile would be in no
15 position to stop the sale because it had made extensive final decisions such as employee
16 terminations or transitions and lease arrangements, and HIT Mobile would face a buyer who had
17 rights against it if it halted the transaction. HIT Mobile's choices were either insolvency or folding
18 to T-Mobile's unconscionable demands.

19 80. T-Mobile also induced the putative releases by fraud. T-Mobile concealed its true
20 intentions regarding store closures, lease renewals, growth, and support from the outset. Then, after
21 intentionally devastating the businesses of dealers like HIT Mobile, T-Mobile fraudulently
22 represented it had approved the dealers' sales of their remaining assets to another T-Mobile dealer
23 but knew it intended to threaten to retract its approval at the last minute unless HIT Mobile
24 supposedly released all claims against T-Mobile. In short, T-Mobile acquired the release through
25 unfair and deceptive practices, improper coercion and fraud, and without giving valid consideration,
26 which renders the release void as a matter of law.

27 81. The putative releases also violate franchise law.
28

1 **H. T-Mobile Continued to Harm HIT Mobile, Even After It Ceased Being a T-Mobile**
2 **Dealer.**

3 82. Pursuant to Section 2.3 of the APA, which T-Mobile approved, T-Mobile was
4 required to promptly pay HIT Mobile's October 2021 commissions to the Buyer, and the Buyer is
5 required to transfer that amount to T-Mobile.

6 83. HIT Mobile's commissions for the month of October 2021 should have been
7 between \$4.1-4.3 million, including commission, spiffs, residuals, and TOC payments. But to
8 punish HIT Mobile, T-Mobile deliberately deflated the amount it claims HIT Mobile is owed for
9 that month, initially claiming that HIT Mobile was only owed \$2.7 million.

10 84. T-Mobile only paid the amounts owed after receiving a letter from counsel and from
11 the Latin Business Association, which threatened to hold a press conference to publicize T-Mobile's
12 mistreatment of one of its elite members.

13 85. In addition, T-Mobile is still withholding the following categories of commission
14 payments to HIT Mobile:

- 15 i. a minimum of \$75,265.52 in missing commission payments due to low
16 payout across existing stores for October 2021;
- 17 ii. \$165,797.09 in base and accessory commission for five profitable stores
18 that were open for the majority of October 2021 before T-Mobile forced
19 their closure;

20 86. HIT Mobile put T-Mobile on notice of these payment discrepancies in a letter dated
21 November 30, 2021.

22 87. T-Mobile's unjustified refusal to make full commission payments to HIT Mobile for
23 October 2021 constitutes a breach of the RSAs between T-Mobile and HIT Mobile.

24 88. T-Mobile's actions particularly caused harm to HIT Mobile's former employees,
25 depriving them of timely commissions payments owed for October 2021 that they should have
26 received during the holiday season.

27 89. T-Mobile also has created unreasonable lease payment exposure for HIT Mobile
28 when it ceased making rent allowances to HIT Mobile for closed stores.

1 90. HIT Mobile recently received a rent payment lawsuit for the landlord of its former
2 Riverside location. T-Mobile mandated the closure of the store with three-and-a-half years
3 remaining on the lease, but T-Mobile would commit to paying only two years of the remaining rent
4 on a monthly basis. However, T-Mobile ceased making the payments once HIT-Mobile sold to the
5 Buyer, thereby subjecting HIT Mobile to suit.

6 **I. T-Mobile Maintained a Mislabeled Franchise Arrangement with HIT Mobile.**

7 91. T-Mobile's relationship with HIT Mobile was a mislabeled franchise relationship.

8 92. T-Mobile's Agreement with HIT Mobile included a false statement that the
9 relationship was not a franchise.

10 93. T-Mobile engaged in unlawful conduct directed at HIT Mobile that violated
11 applicable franchise law.

12 94. T-Mobile granted HIT Mobile and its locations the right to offer, sell, or distribute
13 goods and services – specifically, T-Mobile wireless services and associated cellular phone products
14 – under a marketing plan or system prescribed in substantial part by T-Mobile.

15 95. That marketing plan included, without limitation, sales of T-Mobile-branded goods
16 and services through a network of independent authorized retailers, including HIT Mobile, to create
17 a distribution grid for T-Mobile. HIT Mobile and other dealers were required to invest and take on
18 substantial risk to commit them to the retailer and distribution programs established by T-Mobile.

19 96. HIT Mobile's operation was substantially associated with the trademarks, service
20 marks, trade names, advertising, or other commercial symbols designating, owned by, or licensed
21 by T-Mobile and its affiliates. Indeed, to a customer visiting an HIT Mobile store, the store
22 appeared to be a T-Mobile-owned store because of the extensive T-Mobile signage and logos
23 appearing on the employee uniforms -- all of which were mandated by T-Mobile.

24 97. HIT Mobile was required to pay to T-Mobile, directly or indirectly, franchise fees.
25 Those fees included, without limitation:

- 26 a. withholding substantial CSAs that HIT Mobile was entitled to be paid as a
27 condition of doing business with T-Mobile;

28

- 1 b. deducting, as a fee, a percentage of HIT Mobile's commissions to pay for
2 future inventory and holding those commissions in T-Mobile's possession;
3 c. improper and unauthorized chargebacks against HIT Mobile's commissions
4 due from T-Mobile;
5 d. the forced-purchase of furniture, uniforms, services, phones, and accessories
6 from T-Mobile-selected vendors, who provided the goods and services to
7 HIT Mobile at a substantial mark-up that was directly passed on to
8 T-Mobile;
9 e. the assessment of charges labeled as "penalties" or "fines" for items such as
10 missed training for employees, staff shortages, or findings in audits
11 conducted by or on behalf of T-Mobile;
12 f. the required surrender of returned phones to T-Mobile without any refund to
13 HIT Mobile for any portion of the phones;
14 g. T-Mobile's receipt of funds from vendors in return for allowing those
15 vendors to advertise in HIT Mobile's stores;
16 h. charges for HIT Mobile's sales of accessories (which did not reflect mere
17 wholesale sales of accessories to HIT Mobile by T-Mobile at wholesale);
18 i. markups on shipping fees; and
19 j. backend charges for co-op parts.

20 98. T-Mobile failed to properly register as required for franchise relationships and
21 abused its franchise relationship with HIT Mobile. Further, T-Mobile unlawfully terminated its
22 franchise with HIT Mobile.

23 CAUSES OF ACTION

24 FIRST CAUSE OF ACTION: FRAUD AND FRAUDULENT INDUCEMENT

25 99. HIT Mobile re-alleges, as if fully set forth herein, each and every allegation
26 contained in the preceding paragraphs.

27 100. T-Mobile fraudulently concealed its plans to massively cut HIT Mobile's number of
28 locations, suppress its ability to succeed, and stifle its growth.

1 101. T-Mobile also concealed its plans to cut HIT Mobile's residuals from 6% to 3%
2 effective July 2019.

3 102. These representations and concealments were material and false.

4 103. T-Mobile knew that it intended to close far more of HIT Mobile's stores than it
5 represented, and that it intended to reduce HIT Mobile's residuals.

6 104. T-Mobile concealed these material facts with the intent to deceive HIT Mobile,
7 including as a material inducement to HIT Mobile to enter into the RSAs.

8 105. HIT Mobile was deceived by and relied on the misrepresentations and concealments.

9 106. In reliance on T-Mobile's concealment of its plans to close additional stores, T-
10 Mobile entered into the RSAs and the InTouch and MFM acquisitions.

11 107. In reliance on T-Mobile's concealment of its plan to cut HIT Mobile's residuals from
12 6% to 3%, T-Mobile engaged in a growth strategy, including by acquiring InTouch and MFM at the
13 pre-reduction price.

14 108. HIT Mobile could not have learned the true facts through reasonable diligence, and
15 as a result, its reliance on T-Mobile's misrepresentations was justified and reasonable.

16 109. As a direct and proximate result of T-Mobile's fraudulent misrepresentations and
17 concealments, HIT Mobile has suffered damages in an amount to be determined at trial, but
18 certainly in excess of \$60 million.

19 **SECOND CAUSE OF ACTION: NEGLIGENT MISREPRESENTATION**
20 **(IN THE ALTERNATIVE)**

21 110. HIT Mobile re-alleges, as if fully set forth herein, each and every allegation
22 contained in the preceding paragraphs.

23 111. HIT Mobile pleads negligent misrepresentation in the alternative to fraud and
24 fraudulent inducement.

25 112. As alleged herein, T-Mobile supplied misinformation (by direct statement and
26 concealment that misled HIT Mobile concerning the nature of the T-Mobile-HIT Mobile
27 relationship), including regarding future growth, store closures, and compensation changes, which
28 information was material, false, and misleading.

1 113. T-Mobile knew that supplying this information to HIT Mobile would induce HIT
2 Mobile to acquire InTouch and MFM at the pre-reduction price and to execute the RSA
3 Agreement, and in supplying this information T-Mobile intended to induce HIT Mobile to do so.

4 114. T-Mobile was negligent in obtaining and communicating this false information to
5 HIT Mobile.

6 115. HIT Mobile reasonably relied on this false information in deciding whether to
7 execute the RSAs and acquire InTouch and MFM at a premium price.

8 116. T-Mobile's false information proximately caused damages to HIT Mobile.

9 117. As a result of T-Mobile's negligent misrepresentations, HIT Mobile has suffered
10 damages in an amount to be determined at trial, but certainly in excess of \$60 million.

11 **THIRD CLAIM FOR RELIEF: VIOLATION OF CALIFORNIA UNFAIR PRACTICES**
12 **ACT, CAL. CORP. CODE §17200, ET SEQ.**

13 118. HIT Mobile re-alleges, as if fully set forth herein, the allegations set forth above.

14 119. T-Mobile was and is a "person" as defined in Cal. Corp. Code §17201.

15 120. By engaging in the practices described herein, T-Mobile has engaged in in unfair
16 competition, as defined by Business & Professions Code Section 17200 including, without
17 limitation, the following:

18 a. Making false representations to induce HIT Mobile to sign the RSAs and
19 coercing HIT Mobile to do so or else forego the ability to sell goods or
20 services or to profit from the merger;

21 b. Making false representations that, if HIT Mobile signed the 2020 RSA, it
22 would do more business in six months than it normally did in twelve months
23 and it would forgo that compensation if it did not sign;

24 c. Engaging in anti-competitive conduct to disadvantage and drive HIT Mobile
25 out of the marketplace;

26 d. Weaponizing the commercial relationship by misapplying contractual terms
27 to contrary to the language and spirit of the contracts to cheat HIT Mobile,
28 suppress it, and effectively drive it out of business;

- 1 e. Representing in the RSAs that no franchise relationship was be created but in
2 fact, creating such a franchise relationship abusing HIT Mobile as a
3 franchisee; and
4 f. Converting payments due to HIT Mobile for, among other things,
5 commissions and rent following the same to the Buyer.

6 121. T-Mobile's actions were unlawful, unfair, and fraudulent and deceptive trade
7 practices affecting trade and/or commerce given that it is engaged in the sale of assets, services, and
8 commerce that directly affect consumers.

9 122. T-Mobile's unfair and deceptive trade practices affect the public because it:

- 10 a. committed its anti-competitive acts in the course of its business;
11 b. engaged in a pattern or generalized course of conduct which involved the
12 intentional devastation of dealers like HIT Mobile and of committing the
13 wrongful actions and inactions addressed in this Complaint, which injured
14 wireless dealers, employees, and customers;
15 c. has shuttered many successful businesses and force them out of the
16 marketplace;
17 d. failed to honor the letter and spirit of the representations that it made to
18 government authorities to obtain approval of its merger;
19 e. is likely to continue its unlawful conduct; and
20 f. has negatively impacted a large number of consumers.

21 123. HIT Mobile actually relied on T-Mobile's misrepresentations and omissions and T-
22 Mobile's misrepresentations and nondisclosures were an immediate cause of injury to HIT Mobile.

23 124. T-Mobile's unfair and deceptive conduct is the actual and proximate cause of injury
24 to HIT Mobile and has caused financial damages to HIT Mobile in an amount to be determined at
25 trial, but certainly in excess of \$60 million.

1 **FOURTH CAUSE OF ACTION: VIOLATION OF WASHINGTON UNFAIR BUSINESS**
2 **PRACTICES—CONSUMER PROTECTION ACT, RCW §§ 19.86.010 ET SEQ.**
3 **(IN THE ALTERNATIVE)**

4 125. HIT Mobile re-alleges, as if fully set forth herein, each and every allegation
5 contained in the preceding paragraphs and in the preceding cause of action.

6 126. T-Mobile engaged in unfair and deceptive trade practices including those identified
7 above

8 127. T-Mobile’s unfair and deceptive trade practices affect trade and/or commerce given
9 that T-Mobile is engaged in the sale of assets, services, and commerce that directly affect the people
10 of Washington state.

11 128. T-Mobile’s unfair and deceptive trade practices affect the public as outlined above.

12 129. T-Mobile’s unfair and deceptive conduct is the actual and proximate cause of injury
13 to HIT Mobile and has caused damages to HIT Mobile in an amount to be determined at trial, but
14 certainly in excess of \$60 million.

15 130. HIT Mobile is entitled to an award of damages caused by T-Mobile’s unlawful
16 conduct, including reasonable attorneys’ fees and statutory treble damages as provided by RCW
17 19.86.090.

18 **FIFTH CLAIM FOR RELIEF VIOLATION OF CALIFORNIA FRANCHISE**
19 **INVESTMENT LAW, CAL. CORP. CODE §31000, ET SEQ.**

20 131. HIT Mobile re-alleges, as if fully set forth herein, the allegations set forth above.

21 132. T-Mobile is a franchisor and unlawfully sold an unregistered franchise in the State of
22 California contrary to Cal. Corp. Code § 31100 and was not exempt from registration requirements.

23 133. HIT Mobile is a franchisee under Cal. Corp. Code § 31006.

24 134. T-Mobile’s business model and mode of operation is in fact a “franchise” as defined
25 in Cal. Corp. Code § 31005 in that:

- 26 a. T-Mobile granted HIT Mobile a putative business opportunity to offer, sell,
27 and distribute goods and services under pre-designed marketing plans;
28 b. the business opportunity was substantially associated with a trademark, trade
 name, and other commercial symbols owned by T-Mobile; and

1 c. T-Mobile collected disguised franchise fees from HIT Mobile.

2 135. T-Mobile violated Cal. Corp. Code § 31201 when it made written and oral
3 communications to HIT Mobile which included untrue statements of material facts and when it
4 omitted to state material facts necessary in order to make the statements made, in the light of the
5 circumstances under which they were made, not misleading.

6 136. T-Mobile's violation of Cal. Corp. Code § 31201 is a violation of Cal. Corp. Code §
7 31301 because HIT Mobile relied on T-Mobile's misrepresentations in executing the new T-Mobile
8 Agreement, and HIT Mobile was unaware of the facts concerning the untruth and the omissions.

9 137. T-Mobile did not exercise any reasonable care to make HIT Mobile aware of the
10 reality.

11 138. T-Mobile violated Cal. Corp. Code § 31202, when it willfully failed to disclose the
12 following under Cal. Corp. Code § 31101(c) at least fourteen days prior to HIT Mobile's signing of
13 the T-Mobile's TSAs:

14 a. A copy of the typical franchise contract or agreement proposed for use or in
15 use in this state.

16 b. A statement of the franchise fee charged, the proposed application of the
17 proceeds of such fee by the franchisor, and the formula by which the amount
18 of the fee is determined if the fee is not the same in all cases.

19 c. A statement describing any payments or fees other than franchise fees that
20 the franchisee or subfranchisor is required to pay to the franchisor, including
21 royalties and payments or fees which the franchisor collects in whole or in
22 part on behalf of a third party or parties.

23 d. A statement of the conditions under which the franchise agreement may be
24 terminated or renewal refused, or repurchased at the option of the franchisor.

25 e. A statement as to whether, by the terms of the franchise agreement or by
26 other device or practice, the franchisee or subfranchisor is required to
27 purchase from the franchisor or his or her designee services, supplies,
28

1 products, fixtures, or other goods relating to the establishment or operation of
2 the franchise business, together with a description thereof.

3 f. A statement as to whether, by the terms of the franchise agreement or other
4 device or practice, the franchisee is limited in the goods or services offered
5 by him or her to his or her customers.

6 g. A statement of the terms and conditions of any financing arrangements when
7 offered directly or indirectly by the franchisor or his or her agent or affiliate.

8 h. A statement of any past or present practice or of any intent of the franchisor
9 to sell, assign, or discount to a third party any note, contract, or other
10 obligation of the franchisee or subfranchisor in whole or in part.

11 i. If any statement of estimated or projected franchisee earnings is used, a
12 statement of such estimation or projection and the data upon which it is
13 based.

14 139. T-Mobile's actions have violated Cal. Corp. Code §§ 31300 and 31411.

15 140. In committing the acts and omissions stated herein, T-Mobile acted willfully and
16 with oppression, fraud and malice in that it has caused HIT Mobile to suffer economic loss in an
17 effort to enrich itself. HIT Mobile is therefore entitled to an award damages and attorneys' fees
18 from Defendants.

19 **SIXTH CLAIM FOR RELIEF: VIOLATION OF CALIFORNIA FRANCHISE**
20 **RELATIONS ACT, CAL. CORP. CODE §20000, ET SEQ.**

21 141. HIT Mobile re-alleges, as if fully set forth herein, the allegations set forth above.

22 142. T-Mobile violated Cal. Corp. Code § 20020 by terminating HIT Mobile's franchise
23 prior to the expiration of its term in the absence of good cause.

24 143. T-Mobile violated Cal. Corp. Code § 20025 for failing to renew HIT Mobile's
25 franchise in the absence of giving it a 180-days prior written notice of its intention not to renew.

26 144. The putative releases contained in the T-Mobile RSAs and the Assignment are void
27 pursuant to Cal. Corp. Code § 20010.

28

1 145. Pursuant to Cal. Corp. Code § 20035, HIT Mobile is entitled to receive from T-
2 Mobile the fair market value of HIT Mobile, its assets, and any other damages that T-Mobile caused
3 by its violations.

4 **SEVENTH CAUSE OF ACTION: VIOLATION OF WASHINGTON FRANCHISE**
5 **INVESTMENT PROTECTION ACT, RCW §§ 19.100.010 ET SEQ.**
6 **(IN THE ALTERNATIVE)**

7 146. HIT Mobile re-alleges, as if fully set forth herein, each and every allegation
8 contained in the preceding paragraphs.

9 147. T-Mobile is a franchisor and T-Mobile unlawfully sold an unregistered franchise in
10 the State of Washington in contravention of RCW 19.100. Upon information and belief, T-Mobile
11 has failed to file a Notice of Claim for Exemption under WAC 460-80-100 and, in any event, is thus
12 not exempt from registration requirements.

13 148. T-Mobile's business model and mode of operation is in fact a "franchise" as defined
14 in RCW 19.100.010(6)(a) in that:

- 15 a. T-Mobile granted HIT Mobile rights to engage in the business of offering,
16 selling, and distributing goods and services under marketing plans pre-
17 designed by T-Mobile;
- 18 b. the business opportunity granted to HIT Mobile was substantially associated
19 with a trademark, trade name, and other commercial symbols owned by
20 T-Mobile; and
- 21 c. T-Mobile collected disguised franchise fees from HIT Mobile, which
22 included, *inter alia*, HIT Mobile's CSAs, forcing HIT Mobile into a
23 consignment model whereby HIT Mobile was forced to buy accessories from
24 a particular vendor and then sell at T-Mobile's prices with substantially
25 reduced margins and forcing HIT Mobile to buy phones from T-Mobile and
26 no other source.

27 149. Specifically, and without limitation, T-Mobile acted unfairly and deceptively and
28 engaged in an unfair method of competition in violation of RCW 19.100.180, by:

- a. Failing to deal with HIT Mobile in good faith;

- 1 b. Requiring HIT Mobile to purchase goods or services from T-Mobile or from
2 an approved source of supply in the absence of any lawful purpose justified
3 on business grounds;
- 4 c. Requiring HIT Mobile to assent to a release or waiver which would relieve
5 T-Mobile from liability imposed by RCW 19.100.180;
- 6 d. Unreasonably and unnecessarily imposing on HIT Mobile standards of
7 conduct such as forcing HIT Mobile to purchase security equipment that
8 complied with only T-Mobile's specifications, mandating that new hires be
9 approved by T-Mobile, and mandating a minimum number of people on sales
10 floors at all times;
- 11 e. Threatening to and actually terminating HIT Mobile's stores before the
12 expiration of their terms without good cause; and
- 13 f. Acting inconsistent with representations made to federal and state authorities
14 concerning commitments not to shut down productive stores or reduce
15 employment.

16 150. As a result of T-Mobile's violations of franchise law, HIT Mobile has suffered
17 damages in an amount to be determined at trial, but certainly in excess of \$60 million.

18 151. HIT Mobile has suffered damages by reason of T-Mobile's violation of RCW 19.100
19 and is entitled to an award of damages thereof, including statutory treble damages as provided by
20 RCW 19.100.190(3).

21 **EIGHTH CLAIM FOR RELIEF: DECLARATORY JUDGMENT**

22 152. HIT Mobile re-alleges, as if fully set forth herein, each and every allegation
23 contained in the preceding paragraphs.

24 153. There is an actual and justiciable controversy among the parties regarding the
25 matters set forth in this lawsuit.

26 154. The law, justice, and equity require determination and declarations that:

- 27 a. The RSAs and the Assignment, they are invalid, void, and of no effect;
- 28

- 1 b. As a result of T-Mobile’s fraudulent inducement of the RSAs and the
2 Assignment and unequal bargaining power, the choice of law provisions
3 contained therein are void and without effect;
- 4 c. The putative releases contained in the RSAs and the Assignment were
5 procured through fraud, unfair and deceptive business practices, improper
6 coercion and economic duress, and/or are not supported by valid
7 consideration, and are therefore void and without effect;
- 8 d. T-Mobile must fully compensate HIT Mobile for its October 2021
9 commission payments; and
- 10 e. T-Mobile must make proper lease allowance payments to HIT Mobile.
- 11 f. The relationships between T-Mobile and HIT Mobile were franchise
12 relationships, such that HIT Mobile is entitled to the benefits of a franchisee
13 under applicable law.

14 **NINTH CLAIM FOR RELIEF: T-MOBILE’S BREACH OF RSAS**
15 **(IN THE ALTERNATIVE)**

16 155. HIT Mobile re-alleges, as if fully set forth herein, each and every allegation
17 contained in the preceding paragraphs.

18 156. If the Court determines that the RSAs remain in place, T-Mobile’s conduct as
19 alleged herein breached those contracts.

20 157. T-Mobile’s breaches include, but are not limited to, failing to timely make full
21 commission payments to HIT Mobile for October 2021 and failing to make payments due for rent
22 relative to closed stores.

23 158. T-Mobile’s conduct is the actual and proximate cause of damages to HIT Mobile.

24 159. HIT Mobile has suffered damages in an amount to be determined at trial, but
25 certainly in excess of \$60 million.

1 **TENTH CLAIM FOR RELIEF: BREACH OF THE COVENANT OF GOOD FAITH AND**
2 **FAIR DEALING (IN THE ALTERNATIVE)**

3 160. HIT Mobile re-alleges, as if fully set forth herein, each and every allegation
4 contained in the preceding paragraphs.

5 161. To the extent the RSAs are deemed to be valid contracts that T-Mobile did not
6 fraudulently induce, then T-Mobile is obligated by contract and common law to act in good faith
7 and to not do anything to deprive HIT Mobile of the fruits and benefit of the RSAs.

8 162. T-Mobile breached this implied covenant of good faith and fair dealing and injured
9 HIT Mobile's right to receive the benefits of the RSAs by engaging in the conduct described herein,
10 including, without limitation:

- 11 a. Systematically closing a disproportionate share of HIT Mobile's most
12 profitable stores;
- 13 b. Refusing to approve additional HIT Mobile stores and building corporate
14 stores in proximity to existing HIT Mobile locations;
- 15 c. Reducing HIT Mobile's compensation;
- 16 d. Refusing to fully pay HIT Mobile its October 2021 commission payments;
17 and
- 18 e. Otherwise suppressing HIT Mobile's ability to succeed as described herein.

19 163. T-Mobile's actions are contrary to HIT Mobile's reasonable and justified
20 expectations under the RSAs.

21 164. T-Mobile's sweeping reduction of HIT Mobile's stores, refusal to approve additional
22 stores, and reduction of compensation frustrate the essential purpose of the RSAs, and HIT Mobile
23 is unable to obtain its full and expected benefits of the RSAs, including without limitation,
24 operating as a dealer of T-Mobile services and goods.

25 165. T-Mobile used the termination of locations provision to constructively gut the
26 essential purpose of the RSAs and to bind HIT Mobile and its owners to a non-compete agreement
27 where they could not compete in the marketplace, all while T-Mobile continued to systematically
28 eliminate HIT Mobile's stores, refused to allow HIT Mobile to open new stores, and engaged in

1 anti-competitive, unfair, and deceptive trade practices to guarantee that HIT Mobile's remaining
2 stores failed.

3 166. T-Mobile never intended to work with HIT Mobile. It only wanted signed
4 Agreements that would constrain HIT Mobile and eliminate HIT Mobile's ability to defend itself.
5 Further, as T-Mobile possessed HIT Mobile's financial information, it knew before HIT Mobile
6 signed the RSAs that its actions would have a negative impact on HIT Mobile.

7 167. T-Mobile's abrupt and systematic reduction of HIT Mobile's stores, refusal to
8 approve additional store acquisitions, reduction of compensation, and anti-competitive conduct to
9 destroy HIT Mobile's remaining stores caused HIT Mobile to suffer damages in an amount to be
10 determined at trial, but certainly in excess of \$60 million.

11 **PRAYER FOR RELIEF**

12 Accordingly, HIT Mobile respectfully requests that the Court:

13 A. Award judgment in favor of HIT Mobile and against T-Mobile on each of HIT
14 Mobile's causes of action;

15 B. Award HIT Mobile its actual damages, which exceed \$60 million, plus statutory
16 treble damages, punitive damages, attorneys' fees, and costs as pursuant to statutory authority
17 mentioned herein;

18 C. Afford HIT Mobile a trial by jury on all claims alleged herein; and

19 D. Grant HIT Mobile such other and further relief as is just and proper.

20
21 DATED: February 25, 2022

Respectfully submitted,

22 KILPATRICK TOWNSEND & STOCKTON LLP

23
24 By: 

25 VINCENT I. PARRETT

26 Attorneys for Plaintiff
27 HIT MOBILE, INC.
28