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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO**

CHERYL MILLER, as an individual, and
on behalf of all others similarly situated,

Plaintiff,

vs.

MOUNTAIN HIGH REUNITED, LLC, a
California Limited Liability Company; and
DOES 1 through 100,

Defendants.

Case No.: CIV DS 2010045

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

- (1) **FAILURE TO PAY ALL OVERTIME
WAGES (LABOR CODE §§ 204, 510,
558, 1194, 1198);**
- (2) **MINIMUM WAGE VIOLATIONS
(LABOR CODE §§ 1182.12, 1194, 1194.2,
1197, 1198);**
- (3) **MEAL PERIOD VIOLATIONS (LABOR
CODE §§ 226.7, 512, 558);**
- (4) **REST PERIOD VIOLATIONS (LABOR
CODE § 226.7, 516, 558);**
- (5) **WAGE STATEMENT VIOLATIONS
(LABOR CODE § 226, *et seq.*);**
- (6) **WAITING TIME PENALTIES (LABOR
CODE §§ 201-203)**
- (7) **FAILURE TO INDEMNIFY ALL
NECESSARY BUSINESS
EXPENDITURES (LABOR CODE §§
2802, 2804);**
- (8) **UNFAIR COMPETITION (BUS. &
PROF. CODE § 17200 *et seq.*); and**
- (9) **CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT (LABOR CODE § 2698 *et seq.*).**

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

AUG 18 2020

BY Jacqueline Harness
JACQUELINE HARNESS, DEPUTY

1 Plaintiffs Cheryl Miller (“Plaintiff Miller”) and Sherry Bamburg (“Plaintiff Bamburg”)
2 (collectively, “Plaintiffs”), on behalf of themselves and all others similarly situated, hereby brings
3 this First Amended Class and Representative Action Complaint (“Complaint”) against
4 Defendants Mountain High Reunited, LLC, a California Limited Liability Company, and DOES
5 1 to 100, inclusive (collectively, “Defendants”), and on information and belief alleges as follows:

6 **JURISDICTION**

7 1. Plaintiffs, on behalf of themselves and all others similarly situated, hereby bring
8 this Complaint for recovery of unpaid wages and penalties under California Business &
9 Professions Code § 17200 *et. seq.*, Labor Code §§ 201-204, 226, 226.7, 510, 512, 516, 558,
10 1182.12, 1194, 1194.2, 1197, 1198, 2802, 2804, and 2698 *et seq.*, and Industrial Welfare
11 Commission Wage Order No. 10 (“Wage Order 10”), in addition to seeking injunctive relief,
12 declaratory relief, and restitution.

13 2. This Complaint is brought pursuant to California Code of Civil Procedure § 382.
14 The monetary damages and restitution sought by Plaintiffs exceed the minimal jurisdictional
15 limits of the Superior Court and will be established according to proof at trial.

16 3. This Court has jurisdiction over Defendants because, upon information and belief,
17 Defendants have sufficient minimum contacts in California, or otherwise intentionally avail
18 themselves to the California market so as to render the exercise of jurisdiction over them by the
19 California courts consistent with the traditional notions of fair play and substantial justice.

20 **VENUE**

21 4. Venue as to each Defendant is proper in this judicial district pursuant to California
22 Code of Civil Procedure §§ 395(a) and 395.5, as at least some of the acts and omissions
23 complained of hereon occurred in the County of San Bernardino. Defendants own, maintain
24 offices, transact business, have agent(s) within the County of San Bernardino, and/or otherwise
25 are found within the County of San Bernardino, and Defendants are within the jurisdiction of this
26 Court for purposes of service of process.

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PARTIES

5. Plaintiffs are individuals over the age of eighteen (18). At all relevant times herein, Plaintiffs were, and currently are, California residents. During the four years immediately preceding the filing of this action and within the statute of limitations periods applicable to each cause of action pled herein, Plaintiffs were employed by Defendants. Plaintiffs were, and are, victims of Defendants' policies and/or practices complained of herein, lost money and/or property, and have been deprived of the rights guaranteed by California Business & Professions Code § 17200 *et. seq.*, Labor Code §§ 201-204, 226, 226.7, 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197, 1198, 2802, 2804, and 2698 *et seq.*, and Wage Order 10, which sets employment standards for the "Amusement and Recreation Industry."

6. Plaintiffs are informed and believe, and based thereon allege, that during the four years preceding the filing of this action and continuing to the present, Defendants did (and continue to do) business as a ski resort that offers facilities, lessons, and rental equipment for skiing activities. Defendants employed Plaintiffs in San Bernardino County and the state of California and, therefore, were (and are) doing business in San Bernardino County and the State of California.

7. The true names, identities and capacities, whether individual, corporate, associate or otherwise, of Defendants Does 1 through 100 are unknown to Plaintiffs at this time, who therefore sue said defendants by such fictitious names pursuant to California Code of Civil Procedure § 474. Upon ascertaining the true and correct names, titles, capacities and/or identities of the defendants designated herein as a Doe, Plaintiffs will amend this Complaint accordingly.

8. Plaintiffs are informed and believe, and thereon allege, that all of the Defendants herein, however designated, whether by real or fictitious name, were and are in some manner responsible for the events, happenings, occurrences and instrumentalities upon and about which complaint is hereinafter made.

9. Plaintiffs are further informed and believe, and thereon allege, that each of the Defendants herein, whether designated by real or fictitious names, are, and at all times relevant hereto, were, the agent, servant, employee and hireling of each of the co-Defendants and in doing

1 the things and acts herein alleged and complained of or in failing to do that which they should
2 have done, were acting within the course and scope of such employment, agency and hiring with
3 the full knowledge, consent, approval and ratification of each of the other co-Defendants.

4 10. At all times mentioned herein, Defendants, and each of them, were members of
5 and engaged in a joint venture, partnership, and common enterprise, and acting within the course
6 and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,
7 Plaintiffs allege that all Defendants were joint employers for all purposes of Plaintiffs.

8 **GENERAL FACTUAL ALLEGATIONS**

9 11. Defendants employed Plaintiff Miller as a non-exempt employee from
10 approximately November 16, 2019 to approximately December 19, 2019. Defendants employed
11 Plaintiff Bamburg as a non-exempt "Ski Lift Operator" from approximately November 24, 2019
12 to approximately January 5, 2020.

13 12. For at least a portion of their employment with Defendants, Plaintiffs recorded
14 their hours worked by using Defendants' electronic timekeeping system that required them to
15 scan their fingerprint and type in their respective employee identification numbers.
16 Notwithstanding that Defendants recorded Plaintiffs' respective hours worked to the minute,
17 Defendants systematically underpaid Plaintiffs through a policy and/or practice of rounding
18 and/or time-shaving, such that Plaintiffs were typically paid in quarter hour increments. As a
19 result, Defendants regularly, systematically, and impermissibly rounded the hours worked by
20 Plaintiffs and other non-exempt employees in Defendants' favor, such that the rounding and/or
21 time-shaving practice utilized by Defendants was not even-handed over time and would round
22 and shave in Defendants' favor such that Defendants routinely underpaid Plaintiffs for their time
23 worked. Due to Defendants' timekeeping policies and/or practices that fail to compensate for all
24 hours worked, Plaintiffs and other non-exempt employees were deprived of all required minimum
25 and overtime wages.

26 13. During the relevant time period, Defendants failed to provide non-exempt
27 employees with all legally required meal periods due to Defendants' meal period
28 policies/practices. Specifically, Defendants failed to provide non-exempt employees a timely first

1 meal period that commenced prior to the end of the fifth hour of work, due to the work demands
2 placed on Plaintiffs and other non-exempt employees, which sometimes made it impossible to
3 take timely, 30-minute meal periods. On those occasions when Plaintiffs and/or other non-exempt
4 employees were not provided with all legally-required meal periods to which they were entitled,
5 Defendants failed to compensate them with the required meal period premium for each workday
6 in which they experienced a meal period violation as mandated by Labor Code § 226.7. On
7 information and belief, for at least a portion of the relevant time period, Defendants did not
8 maintain a pay code or other mechanism to pay the required meal period premiums under Labor
9 Code § 226.7.

10 14. Defendants also failed to authorize and permit Plaintiffs and other non-exempt
11 employees all required rest periods. Specifically, Plaintiffs were not always authorized and
12 permitted to take all legally-compliant rest periods in a timely fashion due to work demands,
13 which sometimes made it impossible to take all rest periods to which they were entitled. Further,
14 Defendants failed to authorize and permit Plaintiffs and other non-exempt employees to take a
15 third rest period on shifts over 10.0 hours. On those occasions when Defendants failed to
16 authorize and permit Plaintiffs and other non-exempt employees all legally-compliant rest periods
17 to which they were entitled, Defendants failed to compensate employees with the required rest
18 period premium for each workday in which they experienced a rest period violation as mandated
19 by Labor Code § 226.7. Further, upon information and belief, during at least a portion of the
20 relevant time period, Defendants failed to maintain any pay code or other mechanism for the
21 payment of rest period premiums when they failed to provide Plaintiffs and other non-exempt
22 employees with legally-compliant rest periods.

23 15. Defendants also failed to reimburse and/or indemnify Plaintiffs and other non-
24 exempt employees for all reasonable and necessary work expenditures. For example, Defendants
25 required Plaintiffs and other non-exempt employees who work indoors to purchase a Mountain
26 High branded jacket for approximately \$40.00 at the start of their respective tenures with
27 Defendants, and did not reimburse Plaintiffs or other employees for this expense. Defendants also
28 failed to indemnify Plaintiffs and other non-exempt employees for other reasonable and necessary

business expenses, including, but not limited to, personal cellular phone and/or personal computer expenses. Specifically, Defendants required Plaintiffs and other non-exempt employees to view their daily work schedules on an application called “When to Work,” either through an app on their personal cellular phone or on their personal computer. Notwithstanding that Defendants required Plaintiffs and other non-exempt employees to use their personal equipment and/or funds for work purposes, Defendants failed to reimburse employees for these expenses. Therefore, Plaintiffs and other non-exempt employees are entitled reimbursement pursuant to Labor Code § 2802.

16. As a result of Defendants’ failure to pay all overtime and minimum wages, as well as meal and rest period premiums, Defendants failed to pay all wages to Plaintiffs and other formerly-employed non-exempt employees at the separation of their employment. Further, Defendants failed to pay all waiting time penalties owed to Plaintiffs and other non-exempt former employees by virtue of its failure to timely pay for the time spent completing mandatory sexual harassment training, and failing to pay all waiting time penalties owed to Plaintiffs and other non-exempt former employees who were not paid timely for sexual harassment training.

17. As a further result of Defendants’ failure to pay all overtime and minimum wages, as well as meal and rest period premiums, Defendants failed to furnish complete and accurate, itemized wage statements to Plaintiffs and other non-exempt employees.

CLASS ACTION ALLEGATIONS

18. On March 17, 2020, Plaintiff Miller submitted the original Class Action Complaint in this matter for filing; however, due to delays resulting from COVID-19 related Court closures, the Court deemed the Complaint filed on May 29, 2020. Accordingly, Plaintiffs have defined the Class Periods for each cause of action based on the original March 17, 2020 filing date.

19. **Class Definitions:** Plaintiffs bring this action on behalf of themselves and the following Classes pursuant to § 382 of the Code of Civil Procedure:

- a. The Overtime Class consists of all of Defendants’ current and former non-exempt employees in California who: (i) worked in excess of 10.0 hours in a workday and/or in excess of 48.0 hours in a workweek, in a month of the year during which

Alpine or Nordic skiing activities are being conducted, or in excess of 8.0 hours in a workday and/or in excess of 40.0 hours in a workweek in other months of the year; and (ii) were subject to Defendants' timekeeping system and/or practices, during the time period of March 17, 2016 through the present.

b. The Minimum Wage Class consists of all of Defendants' current and former non-exempt employees in California who were subject to Defendants' timekeeping system and/or practices, at any time from March 17, 2016 through the present.

c. The Meal Period Class consists of all of Defendants' current and former non-exempt employees in California who worked at least one shift in excess of 5.0 hours, at any time from March 17, 2016 through the present.

d. The Rest Period Class consists of all of Defendants' current and former non-exempt employees in California who worked at least: (i) one shift of 3.5 hours or more; and/or (ii) one shift in excess of 10.0 hours, at any time from March 17, 2016 through the present.

e. The Wage Statement Class consists of all members of the Overtime Class, Minimum Wage Class, Meal Period Class, and/or Rest Period Class who have received a wage statement, at any time from March 17, 2019 through the present.

f. The Waiting Time Class consists of (i) all members of the Overtime Class, Minimum Wage Class, Meal Period Class, and/or Rest Period Class who are former employees of Defendants; and/or (ii) all of Defendants' non-exempt employees who were not paid timely for sexual harassment training, whose employment with Defendants ended at any time from March 17, 2017 through the present.

g. The Employee Expense Class consists of all of Defendants' current and former non-exempt employees in California who: (i) used their personal cellular phone and/or computer to access their work schedules; and/or (ii) purchased a Mountain High branded jacket, at any time from March 17, 2016 through the present.

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1 20. **Numerosity/Ascertainability:** The members of the Classes are so numerous that
2 joinder of all members would be unfeasible and not practicable. The membership of the classes
3 and subclasses are unknown to Plaintiffs at this time; however, it is estimated that the Class
4 Members number greater than one hundred (100) individuals as to each Class. The identity of
5 such membership is readily ascertainable via inspection of Defendants' records.

6 21. **Common Questions of Law and Fact Predominate/Well Defined Community**
7 **of Interest:** There are common questions of law and fact as to Plaintiffs and all other similarly
8 situated employees, which predominate over questions affecting only individual members
9 including, without limitation to:

- 10 i. Whether Defendants violated the applicable Labor Code provisions including, but
11 not limited to §§ 510 and 1194, by requiring overtime work and not paying
12 Plaintiffs and members of the Overtime Class for said work according to the
13 overtime laws of the State of California;
- 14 ii. Whether Plaintiffs and members of the Minimum Wage Class were compensated
15 for all hours actually worked;
- 16 iii. Whether Defendants' meal period policies and/or practices have deprived
17 Plaintiffs and members of the Meal Period Class of all meal periods to which they
18 have been entitled as a matter of law;
- 19 iv. Whether Defendants provided meal period premium payments for non-compliant
20 meal periods;
- 21 v. Whether Defendants' rest period policies and/or practices have deprived Plaintiffs
22 and members of the Rest Period Class of all rest periods to which they have been
23 entitled as a matter of law;
- 24 vi. Whether Defendants provided rest period premium payments for non-compliant
25 rest periods;
- 26 vii. Whether Defendants issued complete and accurate, itemized wage statements to
27 Plaintiffs and members of the Wage Statement Class pursuant to Labor Code §
28 226;

1 viii. Whether Defendants’ policies and/or practices for the timing and amount of
2 payment of final wages to Plaintiffs and members of the Waiting Time Class at
3 the time of their separation of employment were lawful; and

4 ix. Whether Defendants’ reimbursement policies, and failure to reimburse Plaintiffs
5 and members of the Employee Expense Class for business expenses necessarily
6 incurred in the performance of their work duties, comply with Labor Code § 2802.

7 22. **Predominance of Common Questions:** Common questions of law and fact
8 predominate over questions that affect only individual members of the Classes. The common
9 questions of law set forth above are numerous and substantial and stem from Defendants’ policies
10 and/or practices applicable to each individual class member, such as their failure to pay overtime
11 wages, failure to pay minimum wages, failure to implement lawful meal period policies and
12 practices, failure to implement lawful rest period policies and practices, failure to provide accurate
13 itemized wage statements, failure to pay all final wages, and failure to pay all necessary business
14 expenditures. As such, these common questions predominate over individual questions
15 concerning each individual class member’s showing as to their eligibility for recovery or as to the
16 amount of their damages.

17 23. **Typicality:** The claims of Plaintiffs are typical of the claims of the Classes because
18 Defendants employed Plaintiffs in California as non-exempt employees. As alleged herein,
19 Plaintiffs, like the members of the Classes, were deprived of all overtime wages for all overtime
20 hours worked, deprived of minimum wages for hours actually worked, were not provided with all
21 legally-compliant meal periods, were not authorized and permitted to take all legally-compliant
22 rest periods, did not receive premium pay for all rest period violations, were not furnished with
23 accurate itemized wage statements, did not receive all earned final wages, and/or did not receive
24 reimbursements for all necessary business expenditures.

25 24. **Adequacy of Representation:** Plaintiffs are fully prepared to take all necessary
26 steps to represent fairly and adequately the interests of the members of the Classes. Moreover,
27 Plaintiffs’ attorneys are ready, willing, and able to fully and adequately represent the members of
28 the Classes and Plaintiffs. Plaintiffs’ attorneys have prosecuted and defended numerous wage-

1 and-hour class actions in state and federal courts in the past and are committed to vigorously
2 prosecuting this action on behalf of the members of the classes.

3 25. **Superiority:** The California Labor Code is broadly remedial in nature and serves
4 an important public interest in establishing minimum working conditions and standards in
5 California. These laws and labor standards protect the average working employee from
6 exploitation by employers who have the responsibility to follow the laws and who may seek to
7 take advantage of superior economic and bargaining power in setting onerous terms and
8 conditions of employment. The nature of this action and the format of laws available to Plaintiffs
9 and members of the Classes make the class action format a particularly efficient and appropriate
10 procedure to redress the violations alleged herein. If each employee was required to file an
11 individual lawsuit, Defendants would necessarily gain an unconscionable advantage since they
12 would be able to exploit and overwhelm the limited resources of each individual Plaintiff with
13 their vastly superior financial and legal resources. Moreover, requiring each member of the
14 Classes to pursue an individual remedy would also discourage the assertion of lawful claims by
15 employees who would be disinclined to file an action against their former and/or current employer
16 for real and justifiable fear of retaliation and permanent damages to their careers at subsequent
17 employment. Further, the prosecution of separate actions by the individual class members, even
18 if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications
19 with respect to the individual class members against Defendants herein; and which would
20 establish potentially incompatible standards of conduct for Defendants; and/or legal
21 determinations with respect to individual class members which would, as a practical matter, be
22 dispositive of the interest of the other class members not parties to adjudications or which would
23 substantially impair or impede the ability of the class members to protect their interests. Further,
24 the claims of the individual members of the class are not sufficiently large to warrant vigorous
25 individual prosecution considering all of the concomitant costs and expenses attending thereto.

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1 **FIRST CAUSE OF ACTION**

2 **FAILURE TO PAY ALL OVERTIME WAGES**

3 **(AGAINST ALL DEFENDANTS)**

4 26. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

5 27. This cause of action is brought pursuant to Labor Code §§ 204, 510, 558, 1194,
6 and 1198, which provide that non-exempt employees are entitled to overtime wages for all
7 overtime hours worked, and provide a private right of action for the failure to pay all overtime
8 compensation for overtime work performed.

9 28. At all relevant times, Defendants have been required to properly compensate non-
10 exempt employees, including Plaintiffs, for all overtime hours worked pursuant to California
11 Labor Code § 1194 and Wage Order 10. Wage Order 10, § 3 requires an employer to pay
12 employees “one and one-half times such employee’s regular rate of pay for all hours worked over
13 40 hours in the workweek;” “one and one-half times the employee’s regular rate of pay for all
14 hours worked in excess of eight (8) hours up to and including 12 hours in any workday, and for
15 the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek;”
16 and “double the employee’s regular rate of pay for all hours worked in excess of 12 hours in any
17 workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive
18 day of work in a workweek.”

19 29. Wage Order 10, § 3(K) requires an employer who operates a ski establishment to
20 pay an employee “not less than one and one-half (1½) times the employee’s regular rate of pay”
21 for work in excess of 10.0 hours per work day and/or in excess of 48.0 hours of work in the
22 workweek, “during any month of the year when Alpine or Nordic skiing activities, including
23 snowmaking and grooming activities, are actually being conducted by the ski establishment.”

24 30. Defendants caused Plaintiffs and members of the Overtime Class to work overtime
25 hours, but did not compensate employees at one and one-half times their respective regular rates
26 of pay for such hours.

27 31. The foregoing policies and practices are unlawful and create entitlement to
28 recovery by Plaintiffs and members of the Overtime Class in a civil action for the unpaid amount

1 of overtime premiums owing, including interest thereon, statutory penalties, attorneys' fees, and
2 costs of suit according to California Labor Code §§ 204, 510, 558, 1194, and 1198, and Code of
3 Civil Procedure § 1021.5.

4 **SECOND CAUSE OF ACTION**

5 **MINIMUM WAGE VIOLATIONS**

6 **(AGAINST ALL DEFENDANTS)**

7 32. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

8 33. This cause of action is brought pursuant to Labor Code §§ 204, 558, 1194, 1197
9 and 1198 which provide that all non-exempt employees are entitled to all minimum wages for all
10 hours worked, and provide a private right of action for the failure to pay all minimum wage
11 compensation for all work performed.

12 34. At all relevant times, Defendants were required to compensate Plaintiffs and
13 members of the Minimum Wage Class for all hours worked pursuant to California Labor Code
14 §§ 1194, 1197 and 1198, and Wage Order 10. Wage Order 10, § 4 requires an employer to pay
15 to every employee on the established payday for the period involved not less than the applicable
16 minimum wage for all hours worked in the payroll period. Defendants caused Plaintiffs and
17 Minimum Wage Class members to work hours in a workweek but did not properly compensate
18 Plaintiffs and members of the Minimum Wage Class at least minimum wages for such hours.

19 35. At all times relevant herein, Defendants lacked good faith and had no reasonable
20 grounds for believing that their practices in failing to pay all minimum wages owed at the
21 applicable rate was not a violation of any provision of the Labor Code relating to minimum wage,
22 or an order of the Industrial Welfare Commission. Defendants, in addition to owing minimum
23 wages to Plaintiffs and the members of the Minimum Wage Class, also owe liquidated damages
24 in an amount equal to the wages unlawfully unpaid, and interest thereon, pursuant to Labor Code
25 § 1194.2.

26 36. The foregoing practices and policies are unlawful and create entitlement to
27 recovery by Plaintiffs and members of the Minimum Wage Class in a civil action for the unpaid
28 amount of minimum wages owing, including interest thereon, as well as statutory penalties,

1 liquidated damages, civil penalties, and attorneys' fees and costs of suit, pursuant to Labor Code
2 §§ 204, 558, 1194, 1194.2, 1197, and 1198, Wage Order 10, California Code of Civil Procedure
3 § 1021.5, and Civil Code §§ 3287(b) and 3289.

4 **THIRD CAUSE OF ACTION**

5 **MEAL PERIOD VIOLATIONS**

6 **(AGAINST ALL DEFENDANTS)**

7 37. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

8 38. Defendants failed to provide Plaintiffs and members of the Meal Period Class with
9 proper meal periods in accordance with the mandates of the California Labor Code and Wage
10 Order 10. As such, Defendants are responsible for paying premium compensation for meal period
11 violations pursuant to Labor Code §§ 226.7, 512, and 558, and Wage Order 10.

12 39. Plaintiffs are informed and believe that Defendants maintained a policy and/or
13 practice of failing to pay meal period premiums at the employee's regular rate of compensation,
14 despite Plaintiffs and other members of the Meal Period Class not being provided with legally
15 complaint meal periods. As a result, Plaintiffs and members of the Meal Period Class are owed
16 meal period premium payments per California Labor Code § 512 and 226.7, and Civil Code §§
17 3287(b) and 3289.

18 **FOURTH CAUSE OF ACTION**

19 **REST PERIOD VIOLATIONS**

20 **(AGAINST ALL DEFENDANTS)**

21 40. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

22 41. Wage Order 10, § 12, and California Labor Code §§ 226.7 and 516 establish the
23 right of employees to be authorized and permitted to take a paid rest period of at least ten (10)
24 minutes net rest time for each four (4) hour period worked, or major fraction thereof.

25 42. As alleged herein, Defendants failed to authorize and permit Plaintiffs and all
26 members of the Rest Period Class from taking all required rest periods as non-exempt employees.
27 Defendants also failed to compensate Plaintiffs and members of the Rest Period Class for each
28 rest period to which they were entitled while working.

1 43. The foregoing violations create an entitlement to recovery by Plaintiffs and
2 members of the Rest Period Class in a civil action for the unpaid amount of rest period premiums
3 owing, including interest thereon, as well as statutory penalties, civil penalties, and costs of suit
4 according to California Labor Code §§ 226.7, 516, 558, and Civil Code §§ 3287(b) and 3289.

5 **FIFTH CAUSE OF ACTION**

6 **FAILURE TO PROVIDE ACCURATE, ITEMIZED WAGE STATEMENTS**

7 **(AGAINST ALL DEFENDANTS)**

8 44. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

9 45. Plaintiffs are informed and believe, and based thereon allege, that Defendants
10 knowingly and intentionally, as a matter of uniform practice and policy, failed to furnish Plaintiffs
11 and members of the Wage Statement Class with complete and accurate, itemized wage statements
12 that included, among other requirements, all applicable hourly rates in effect during the pay period
13 along with the corresponding number of hours worked at each hourly rate, and all wages earned
14 during the pay period, in violation of Labor Code §226(a).

15 46. Defendants' failure to furnish Plaintiffs and members of the Wage Statement Class
16 with complete and accurate, itemized wage statements resulted in actual injury, as said failures
17 led to, among other things, the non-payment of all their minimum and overtime wages, and rest
18 period premium wages, and deprived them of the information necessary to identify the
19 discrepancies in Defendants' reported data.

20 47. Defendants' failures create an entitlement to Plaintiffs and Wage Statement Class
21 members in a civil action for damages and/or penalties pursuant to Labor Code § 226, including
22 statutory penalties, reasonable attorneys' fees, and costs, pursuant to Labor Code § 226 et seq.

23 **SIXTH CAUSE OF ACTION**

24 **WAITING TIME PENALTIES**

25 **(AGAINST ALL DEFENDANTS)**

26 48. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

27 49. This cause of action is brought pursuant to California Labor Code §§ 201-203,
28 which require an employer to pay all wages immediately at the time of separation of employment

1 in the event the employer discharges the employee or the employee provides at least 72 hours of
2 notice of their intent to quit. In the event the employee provides less than 72 hours of notice of
3 their intent to quit, said employee's wages become due and payable not later than 72 hours upon
4 said employee's last date of employment.

5 50. Plaintiffs are informed and believe, and based thereon allege, that Defendants
6 failed to timely pay Plaintiffs and members of the Waiting Time Class all final wages due to them
7 at their separation from employment, including unpaid minimum and overtime wages, as well as
8 unpaid rest period premium wages.

9 51. Further, Plaintiffs are informed and believe, and based thereon allege, that as a
10 matter of uniform policy and practice, Defendants continue to fail to pay Plaintiffs and members
11 of the Waiting Time Class all earned wages at the end of employment in a timely manner pursuant
12 to the requirements of Cal. Labor Code §§ 201-203.

13 52. Defendants' failure to pay all final wages was willful within the meaning of Labor
14 Code § 203. Defendants' willful failure to timely pay Plaintiffs and the members of the Waiting
15 Time Class their earned wages upon separation from employment results in a continued payment
16 of daily wages up to thirty days from the time the wages were due.

17 53. Plaintiffs and members of the Waiting Time Class are entitled to compensation
18 pursuant to Cal. Labor Code § 203, plus reasonable attorneys' fees and costs of suit.

19 **SEVENTH CAUSE OF ACTION**

20 **FAILURE TO INDEMNIFY ALL NECESSARY BUSINESS EXPENDITURES**

21 **(AGAINST ALL DEFENDANTS)**

22 54. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

23 55. At all relevant times herein, Defendants were subject to Labor Code § 2802, which
24 states that "an employer shall indemnify his or her employees for all necessary expenditures or
25 losses incurred by the employee in direct consequence of the discharge of his or her duties, or of
26 his or her obedience to the directions of the employer."

27 56. Furthermore, at all relevant times herein, Defendants were subject to Labor Code
28 § 2804, which states that "any contract or agreement, express or implied, made by any employee

1 to waive the benefits of this article or any part thereof, is null and void, and this article shall not
2 deprive any employee or his personal representative of any right or remedy to which he is entitled
3 under the laws of this State.”

4 57. Due to Defendants’ unlawful policy and practice of requiring employees to, *inter*
5 *alia*, purchase Mount High branded jackets and use their personal cellular phones and/or
6 computers for work purposes, and failing to pay reimbursements to Plaintiffs and members of the
7 Employee Expense Class, Defendants have violated Labor Code §2802.

8 58. As a proximate result of Defendants’ policies and/or practices in violation of Labor
9 Code §§ 2802 and 2804, Plaintiffs and members of the Employee Expense Class suffered
10 damages in sums, which will be shown according to proof.

11 59. Plaintiffs and members of the Employee Expense Class are entitled to attorneys’
12 fees and costs of suit pursuant to Labor Code § 2802(c) for bringing this action.

13 **EIGHTH CAUSE OF ACTION**

14 **UNFAIR COMPETITION**

15 **(AGAINST ALL DEFENDANTS)**

16 60. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

17 61. Defendants have engaged and continue to engage in unfair and/or unlawful
18 business practices in California in violation of California Business and Professions Code § 17200
19 et seq., by failing to provide all required overtime wages for overtime hours worked, failing to
20 provide all required minimum wages for regular hours worked, failing to provide all required
21 meal periods, failing to authorize and permit all required rest periods, failing to pay rest period
22 premium wages, failing to reimburse all necessary business expenditures, failing to furnish
23 complete and accurate, itemized wage statements, and failing to timely pay all final wages.

24 62. Defendants’ utilization of these unfair and/or unlawful business practices deprived
25 Plaintiffs of compensation to which they are legally entitled, constitutes unfair and/or unlawful
26 competition, and provides an unfair advantage over Defendants’ competitors who have been
27 and/or are currently employing workers and attempting to do so in honest compliance with
28 applicable wage and hour laws.

63. Plaintiffs are victims of Defendants' unfair and/or unlawful conduct, and therefore seeks full restitution of monies, as necessary and according to proof, to restore any and all monies withheld, acquired and/or converted by Defendants, per Bus. & Prof. Code §§ 17203 and 17208.

64. The acts complained of herein occurred within the last four years immediately preceding the filing of the Complaint in this action.

65. Plaintiffs were compelled to retain the services of counsel to file this court action to protect their interests, to obtain restitution, and to enforce important rights affecting the public interest. Plaintiffs have thereby incurred the financial burden of attorneys' fees and costs, which they are entitled to recover under Code of Civil Procedure § 1021.5.

NINTH CAUSE OF ACTION

PRIVATE ATTORNEYS GENERAL ACT

(AGAINST ALL DEFENDANTS)

66. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

67. Defendants have committed several Labor Code violations against Plaintiffs, members of the Classes, and other aggrieved employees. Plaintiffs, are "aggrieved employees" within the meaning of Labor Code § 2698 *et seq.* ("PAGA"), acting on behalf of themselves and other aggrieved employees, bring this representative action against Defendants to recover the civil penalties due to Plaintiffs, other aggrieved employees, and the State of California according to proof, pursuant to Labor Code § 558 and § 2699 (a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200 for each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each subsequent violation of Lab. Code § 226 pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for each initial violation and \$200 for each subsequent violation per employee per pay period for those violations of the Labor Code

for which no civil penalty is specifically provided, based on the following Labor Code violations:

- a. Failing to compensate Plaintiffs and other aggrieved employees all overtime wages earned in violation of Labor Code §§ 204, 510, 558, 1194, and 1198;
- b. Failing to compensate Plaintiffs and other aggrieved employees at least the statutory minimum wage for all hours worked in violation of Labor Code §§ 1182.12, 1194, 1194.2, 1197 and 1198;
- c. Failing to provide Plaintiffs and other aggrieved employees with their statutorily mandated meal periods and failing to pay meal period premiums in violation of Labor Code §§ 226.7, 512, 558, and 1198;
- d. Failing to authorize and permit Plaintiffs and other aggrieved employees to take their statutorily mandated rest periods and failing to pay rest period premiums in violation of Labor Code §§ 226.7, 516, 558, and 1198;
- e. Failing to furnish Plaintiffs and other aggrieved employees with complete and accurate itemized wage statements in violation of Labor Code § 226;
- f. Failing to timely pay all final wages and compensation earned by aggrieved employees at the time of separation in violation of Labor Code §§ 201- 203;
- g. Failing to reimburse Plaintiffs and other aggrieved employees for all necessary business expenses in violation of Labor Code §§ 1198, 2802 and 2804;
- h. Failing to pay Plaintiffs and other aggrieved employees all wages earned at least twice each calendar month in violation of Labor Code § 204; and
- i. Failing to maintain accurate records on behalf of Plaintiffs and other aggrieved employees in violation of Labor Code § 1174.

68. On March 19, 2020, Plaintiff Miller notified Defendant Mountain High Reunited, LLC (“Mountain High”) via certified mail, and the California Labor and Workforce Development Agency (“LWDA”) via its website, of Defendants’ violations of the California Labor Code and Plaintiff Miller’s intent to bring a claim for civil penalties under the PAGA with respect to violations of the California Labor Code identified herein (“PAGA Notice”).

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69. On April 17, 2020, Mountain High submitted to the LWDA a request to extend its deadline to respond to Plaintiff Miller's PAGA Notice to May 19, 2020 in light of COVID-19. The LWDA did not respond to Mountain High's request. On May 19, 2020, Mountain High submitted to the LWDA a letter regarding Mountain High's purported cure and notice of dispute of alleged violations.

70. On May 22, 2020, Plaintiff Miller submitted to Mountain High via certified mail, and the LWDA via its website, a letter disputing Mountain High's purported cure letter, pursuant to Labor Code § 2699.3(c)(3).

71. On June 30, 2020, Plaintiffs notified Mountain High via certified mail, and the LWDA via its website, of Defendants' additional violations of the California Labor Code ("Amended PAGA Notice").

72. On July 22, 2020, Mountain High submitted to the LWDA via its website a response and purported cure letter regarding the violations alleged in Plaintiffs' Amended PAGA Notice.

73. On July 31, 2020, Plaintiffs submitted to Mountain High via certified mail, and the LWDA via its website, a letter disputing Mountain High's purported cure letter dated July 22, 2020.

74. On August 5, 2020, the LWDA issued its Decision on Cure Dispute letter, in which it notified the parties of its determination that "Mountain High has not cured any of the violations alleged in the PAGA Notice or Amended PAGA Notice." In light of the LWDA's Decision on Cure Dispute, Plaintiffs have exhausted their administrative remedies for bringing a claim under the PAGA with respect to the aforementioned violations.

75. Plaintiffs were compelled to retain the services of counsel to file this court action to protect their interests and the interests of other aggrieved employees, and to assess and collect the civil penalties owed by Defendants. Plaintiffs have thereby incurred attorneys' fees and costs, which they are entitled to recover under California Labor Code § 2699(g).

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WHEREFORE, Plaintiffs pray for judgment against Defendants, as follows:

1. Upon the First Cause of Action, for compensatory, consequential, general, and special damages according to proof pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198;
2. Upon the Second Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 204, 558, 1194, 1194.2, 1197, 1197.1, and 1198;
3. Upon the Third Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 226.7, 512, 558, and 1198;
4. Upon the Fourth Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 226.7, 516, 558, and 1198;
5. Upon the Fifth Cause of Action, for statutory wage statement penalties pursuant to Labor Code § 226;
6. Upon the Sixth Cause of Action, for statutory waiting time penalties pursuant to Labor Code § 203;
7. Upon the Seventh Cause of Action, for compensatory, consequential, general, and special damages according to proof pursuant to Labor Code §§ 2802 and 2804;
8. Upon the Eighth Cause of Action, for restitution to Plaintiff of all money and/or property unlawfully acquired by Defendants by means of any acts or practices declared by this Court to be in violation of Business and Professions Code § 17200 *et seq.*;
9. Upon the Ninth Cause of Action, for civil penalties due to Plaintiffs, the State of California, and other aggrieved employees, pursuant to Labor Code § 558 and § 2699 (a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200 for each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per employee per pay period; (4)

1 \$250.00 for each initial violation and \$1,000.00 for each subsequent violation of Lab. Code § 226
2 pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for each initial
3 violation and \$200 for each subsequent violation per employee per pay period for those violations
4 of the Labor Code for which no civil penalty is specifically provided, based on the Labor Code
5 violations enumerated in paragraph 67(a)-(i) above;

6 10. Prejudgment interest on all due and unpaid wages pursuant to California Labor
7 Code §§ 218.6 and 2802(b) and Civil Code §§ 3287 and 3289;

8 11. On all causes of action, for attorneys' fees and costs as provided by Labor Code
9 §§ 226, 1194, 2699(g), and 2802(c), Code of Civil Procedure § 1021.5, and all other applicable
10 statutes; and

11 12. For such other and further relief the Court may deem just and proper.

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13 Respectfully submitted,

14 Dated: August 17, 2020

HAINES LAW GROUP, APC

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16 By:



Paul K. Haines

Attorneys for Plaintiffs

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18 **DEMAND FOR JURY TRIAL**

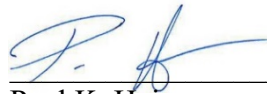
19 Plaintiffs hereby demand a jury trial with respect to all issues triable by jury.

20
21 Respectfully submitted,

22 Dated: August 17, 2020

HAINES LAW GROUP, APC

23
24 By:



Paul K. Haines

Attorneys for Plaintiffs