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Attorneys for Plaintiffs

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. CIVDS 2010045

*[Assigned for all purposes to Hon. David S.
Cohn; Dept. S-26]*

**DECLARATION OF PAUL K. HAINES
IN SUPPORT OF PLAINTIFFS'
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

Date: October 25, 2022
Time: 10:00 a.m.
Dept.: S-26

Complaint Filed: March 17, 2020
Trial Date: None Set

1 I, PAUL K. HAINES, declare as follows:

2 1. I am a shareholder and principal of Haines Law Group, APC, and counsel for the
3 named Plaintiffs Cheryl Miller and Sherry Bamburg (“Plaintiffs”) and the proposed Settlement
4 Class in the above-captioned matter. I am a member in good standing of the bar of the State of
5 California and am admitted to practice in this Court. I have personal knowledge of the facts stated
6 in this declaration and could testify competently to them if called upon to do so.

7 2. I am a 2006 graduate of Pepperdine University School of Law, where I graduated
8 cum laude. During law school, I worked as a law clerk for the appellate firm of Horvitz & Levy,
9 located in Encino, California. I also spent a semester in law school working as an extern for the
10 Honorable Edward Rafeedie, District Judge for the United States District Court for the Central
11 District of California.

12 3. Since graduating from law school, my practice has focused almost exclusively on
13 employment litigation. In September 2007, I began working as an associate attorney at the
14 international law firm of Littler Mendelson P.C., at its Los Angeles office, which according to its
15 website is the “largest U.S.-based law firm exclusively devoted to representing management in
16 every aspect of labor and employment law.” While at Littler Mendelson, I was primarily staffed
17 on wage and hour class actions venued in both state and federal courts, and I also worked on a
18 number of single and multi-plaintiff wage and hour matters as well.

19 4. During my employment at Littler Mendelson, I played a significant role in the
20 class actions that I was staffed on, as I was often the only associate staffed on such cases. In
21 particular, I received a wide-array of wage and hour class action experience performing the
22 following types of tasks: drafting demurrers, motions to strike and/or dismiss; removing actions
23 from state court to federal court; drafting and responding to written discovery; drafting and
24 opposing discovery related motions; arguing discovery related motions; drafting motions to
25 consolidate related matters; interviewing putative class members and obtaining declarations in
26 connection with class certification; drafting oppositions to motions for class certification; drafting
27 motions for decertification following class certification; conducting exposure analyses to assess
28 the strengths and weaknesses of asserted claims, the likelihood of prevailing at class certification

1 and potential damages resulting from such claims; drafting mediation briefs; serving as the
2 primary contact to in-house counsel; deposing named plaintiffs and putative class members;
3 deposing retained expert witnesses; and defending the depositions of corporate witnesses. In
4 short, I played an integral role in all aspects of litigation from the inception of a matter through
5 and beyond class certification. I also supervised the work of several junior attorneys who were
6 staffed on the same wage and hour class actions.

7 5. In June 2011, I voluntarily resigned from Littler Mendelson in order to accept an
8 associate attorney position with the international law firm of Morgan, Lewis & Bockius LLP, at
9 its Los Angeles office, where I began working in July 2011. During my employment at Morgan,
10 Lewis & Bockius LLP, I worked exclusively on the defense of wage and hour class and collective
11 actions. For the vast majority of these cases, I was the only associate staffed on the matter, and I
12 performed the same job duties as described in the immediately preceding paragraph. In addition
13 to working on wage and hour class actions, at Morgan, Lewis & Bockius I also worked on a
14 number of “hybrid” actions asserting nationwide wage and hour claims under the Fair Labor
15 Standards Act (“FLSA”), as well as California-specific claims under Rule 23 of the Rules of Civil
16 Procedure.

17 6. In July 2012, I transitioned into litigating wage and hour class actions from the
18 Plaintiff’s side, first as a Partner with the law firm of Boren, Osher & Luftman, LLP, and since
19 February 2016, as a Shareholder of the Haines Law Group, APC. Currently, over ninety percent
20 (90%) of my practice is dedicated exclusively to the prosecution of wage and hour class actions,
21 and I am currently responsible for prosecuting over fifty (50) wage and hour class actions filed in
22 both State and Federal courts throughout California. I have been appointed as Class Counsel in
23 over one hundred (100) wage and hour class action settlements in state and federal courts within
24 California. A few examples of the matters in which I have been appointed as Class Counsel, all
25 of which have been granted final approval, include the following: *Sanchez v. Res-Care, Inc.*, Case
26 No. BC526175, California Superior Court, County of Los Angeles, Hon. John Shepard Wiley,
27 Jr., presiding; *Prado v. Warehouse Demo Services, Inc.*, Case No. CV14-3170 JFW (Ex), United
28 States District Court, Central District of California, Hon. John F. Walter presiding; *Tesla Motors*

1 *Wage and Hour Litigation*, JCCP 4792, California Superior Court, Santa Clara County, Hon.
2 Peter H. Kirwan presiding; *Bower v. Cycle Gear, Inc.*, Case No. CV14-2712 HSG, United States
3 District Court, Northern District of California, Hon. Haywood S. Gilliam, Jr. presiding;
4 *Longstreth v. PAQ, Inc., dba Food 4 Less*, Case No. 15CV-0206, California Superior Court,
5 County of San Luis Obispo, Hon. Charles S. Crandall presiding; *Nunez v. CompuCom Systems,*
6 *Inc.*, Case No. BC618385, California Superior Court, County of Los Angeles, Hon. John Shepard
7 Wiley, Jr. presiding; *Mansilla v. Haeco Americas Line Services, LLC*, et al, Case No. BC615310,
8 Superior Court of California, County of Los Angeles, Hon. Elihu M. Berle presiding; *Leverage,*
9 *et al v. Traeger Pellet Grills, LLC, et al.*, Case No. 4:16-cv-00784-KAW, United States District
10 Court, Northern District of California, Hon. Kandis A. Westmore presiding.

11 7. I have also moved to certify and have received an order certifying a class action
12 and/or conditionally certifying a collective action, in the following cases:

- 13 • *Medeiros v. Vortex Financial Management Inc.*, Case No. 30-2013-00644741-CU-OE-
14 CXC, California Superior Court, County of Orange, Honorable Judge Gail A. Andler,
15 presiding (certifying a class of employees who were misclassified as independent
16 contractors);
- 17 • *Javine v. San Luis Ambulance Service, Inc.*, Case No. CV13-07480 BRO (SSx), United
18 States District Court, Central District of California, Honorable Judge Beverly Reid
19 O'Connell, presiding (conditionally certifying an unpaid FLSA overtime wage class);
- 20 • *Prado v. Warehouse Demo Services, Inc.*, Case No. CV14-3170 JFW (Ex), United States
21 District Court, Central District of California, Honorable Judge John F. Walter, presiding
22 (certifying a rest period violation class and conditionally certifying an FLSA unpaid
23 overtime wage class);
- 24 • *Bower v. Cycle Gear, Inc.*, Case No. CV14-2712 HSG, United States District Court,
25 Northern District of California, Honorable Judge Haywood S. Gilliam, Jr., presiding
26 (conditionally certifying an unpaid FLSA overtime wage class);
- 27 • *Vega v. Weatherford U.S., Limited Partnership*, Case No. CV14-1790-JLT, United States
28 District Court, Eastern District of California, Honorable Jennifer L. Thurston, presiding

(conditionally certifying an unpaid FLSA overtime wage class);

- *Galvan v. AMVAC Chemical Corporation*, Case No. 30-2014-00716103-CU-OE-CXC, California Superior Court, County of Orange, Honorable Judge William Claster, presiding (certifying unpaid overtime wage class and waiting time penalty class);
- *Ontiveros v. Safelite Fulfillment, Inc., et al*, Case No. CV 15-7118-DMG (RAOx), United States District Court, Central District of California, Honorable Dolly M. Gee presiding (certifying six classes of employees for rest period violations, wage statement violations, meal period violations, and overtime and double-time violations);
- *Vazquez, et al v. Kraft Heinz Foods Company*, Case No. 16-cv-2749-WQH-BLM, United States District Court, Southern District of California, Honorable William Q. Hayes presiding (certifying six classes of employees for unpaid wages, meal period violations, wage statement violations, and waiting time penalties);
- *Caudle, et al. v. Sprint/United Management Company, et al.* Case No. C 17-06874-WHA, United States District Court, Northern District of California, Honorable William H. Alsup presiding (certifying three classes of employees for unlawful wage deduction violations, wage statement violations, and waiting time violations);
- *Staublein v. Wells Fargo Bank, N.A.*, Case No. CIVDS1712267, San Bernardino County Superior Court, Honorable David S. Cohn presiding (certifying wage statement class);
- *Perez v. Sunbelt Rentals, Inc.* Case No. 37-2018-00026405-CU-OE-CTL, California Superior Court, County of San Diego, Honorable Eddie C. Sturgeon presiding (certifying one class of employees for wage statement violations); and
- *Bowlin-Burdick, et al v. Life Care Centers of America, Inc.*, Case No. BC657139, Los Angeles County Superior Court, Honorable Maren E. Nelson presiding (certifying four classes for meal period violations, rest period violations, wage statement violations, and waiting time penalties).

8. In 2015, 2016, and 2017, Thomson Reuters recognized me as a Top Young Attorney in Southern California in the annual Rising Stars Edition of Super Lawyer. This is an honor awarded to no more than two-and-a-half percent of attorneys under the age of forty in

1 Southern California each year. In 2018, 2019, 2020, and 2021, Thomson Reuters recognized me
2 as a “Super Lawyer” in the annual Super Lawyer magazine, an honor awarded to no more than
3 five percent of all attorneys in Southern California each year.

4 9. As counsel for Plaintiffs and the proposed Settlement Class, I have been intimately
5 involved in every aspect of this case from its inception through the present, and I believe that the
6 proposed Settlement is a favorable result for the Settlement Class.

7 10. The proposed Settlement Agreement (“Settlement”) is attached hereto as **Exhibit**
8 **1**. The proposed Class Notice and Notice of Estimated Settlement Award are attached to the
9 Settlement as Exhibits A and B, respectively.

10 11. Defendant Mountain High Reunited, LLC (“Mountain High”) is a winter resort
11 located in San Bernardino County, California.

12 12. On March 17, 2020, Plaintiff Miller filed a Class Action Complaint in San
13 Bernardino County Superior Court alleging causes of actions for: (1) failure to pay all overtime
14 wages; (2) minimum wage violations; (3) rest period violations; (4) wage statement violations;
15 (5) waiting time penalties; (6) failure to indemnify all necessary business expenditures; and (7)
16 unfair competition in violation of California Business & Professions Code § 17200, *et seq.* On
17 August 18, 2020, Plaintiffs filed the operative First Amended Class and Representative Action
18 Complaint to add Plaintiff Bamburg as a named plaintiff and also to add causes of action for meal
19 period violations and civil penalties under the Private Attorneys’ General Act of 2004 (“PAGA”),
20 Labor Code Section 2698, *et seq.* Attached hereto as **Exhibit 2** is Plaintiff Miller’s March 19,
21 2020 letter to the Labor & Workforce Development Agency (“LWDA”).

22 13. Prior to mediation, the Parties engaged in extensive formal and informal discovery.
23 In response to Plaintiffs’ formal discovery requests, Mountain High provided Plaintiffs with
24 approximately 25% sampling of timekeeping and payroll records for Settlement Class members,
25 all relevant wage and hour policies, and other relevant data and information. This discovery
26 allowed the Parties to assess the merits and value of Plaintiffs’ claims, the chances for class
27 certification, and Mountain High’s potential defenses. Plaintiffs’ conducted a comprehensive
28

analysis and extrapolation of the timekeeping and payroll data to calculate Mountain High's potential exposure for each of Plaintiffs' claims.

14. On November 2, 2021, the Parties participated in a full-day mediation with Hon. Steven R. Denton (Ret.), a well-respected wage and hour class action mediator. At the mediation, the Parties vigorously debated their legal positions, the likelihood of certification of Plaintiffs' claims, the legal bases for the claims and defenses, as well as Mountain High's financial condition. At the mediation, the Parties agreed to a class-wide settlement, subject to Plaintiffs' review of Mountain High's financial records, which was documented in a Memorandum of Understanding ("MOU"). During the months that followed, Plaintiffs engaged a forensic accountant to analyze certain financial documents produced by Mountain High, who determined that Mountain High could not reasonably afford to pay more than the settlement achieved at mediation, and the Parties negotiated and finalized the Settlement Agreement now before this Court.

15. The monetary terms of the Settlement are summarized below:

• Gross Settlement Amount ("GSA"):	\$730,000.00
• Minus Court-approved attorney fees (one-third):	\$243,333.33
• Minus Court-approved verified costs (up to):	\$20,000.00
• Minus Court-approved Service Awards:	\$10,000.00
• Minus Amount Set Aside as PAGA penalties:	\$40,000.00
• <u>Minus estimated settlement administration costs:</u>	<u>\$26,000.00</u>
Net Settlement Amount ("NSA"):	\$390,666.67
PLUS 25% "PAGA Amount" to Settlement Class:	\$10,000.00
Total Amount Paid to Settlement Class:	\$400,666.67

16. According to Mountain High, there are approximately 3,062 total Settlement Class members. Therefore, the average Individual Settlement Award is projected to be approximately \$130.85.

17. As described in the accompanying Motion for Preliminary Approval of Class Action Settlement, Plaintiffs allege that Mountain High failed to provide legally-compliant first meal periods. Specifically, throughout the Class Period, Plaintiffs allege that first meal periods were at times not provided until after the completion of five hours of work due to work demands. Plaintiffs further contend that meal periods were at times short (i.e., less than 30 minutes). Based

1 on Plaintiffs' analysis of employee timekeeping records produced by Mountain High, there were
2 approximately 11,246 instances of non-compliant first meal periods reflected in the data.
3 Plaintiffs' analysis also revealed that approximately 4,508 meal period premiums were paid. In
4 addition, based on data provided by Mountain High, Settlement Class members' average hourly
5 rate of pay during the Class Period was \$14.35 per hour. Therefore, assuming each late, short,
6 and/or missed meal period reflected in the timekeeping records would result in a violation,
7 Plaintiffs calculated Mountain High's maximum exposure on this claim at approximately \$96,690
8 ((11,246 first meal period violations – 4,508 meal period premiums) * \$14.35 average premium).
9 However, Mountain High contends that it maintained compliant written meal period policies
10 throughout the Class Period, and provided legally-compliant meal periods in line with those
11 policies. Mountain High also argues that under *Brinker*, it was only required to "provide" the
12 opportunity to take meal periods, not "ensure" meal periods are taken. Mountain High also argues
13 that any short, missed, or late first meal period was the result of lawful employee waiver or choice,
14 thereby precluding liability. Lastly, Mountain High argues individualized inquiries would be
15 needed to determine why each meal period was taken late or short or missed by each employee,
16 and whether there was a valid waiver, making certification of the meal period claim unlikely. In
17 light of these defenses and arguments, Plaintiffs discounted Mountain High's maximum exposure
18 by 50% for the risk of non-certification, and an additional 60% to account for Mountain High's
19 defenses on the merits, to arrive at an estimated total of approximately \$19,338.

20 18. Plaintiffs also allege that Mountain High failed to provide legally-compliant
21 second meal periods during shifts in excess of 10.0 hours. Based on Plaintiffs' review of employee
22 timekeeping data, approximately 31,645 shifts during the Class Period reflected a potential
23 second meal period violation. Thus, Plaintiffs calculated Mountain High's maximum exposure
24 on this claim at \$454,105 (31,645 second meal period violations * \$14.35 average premium).
25 However, Mountain High argues that it has maintained compliant meal period practices
26 throughout the Class Period, that under *Brinker* it is only required to "provide" the opportunity to
27 take second meal periods, and that any missed second meal periods were the result of lawful
28 employee waiver or choice. Mountain High also contends that Settlement Class members

1 voluntarily waived their second meal periods on shifts in excess of 10.0 hours but less than 12.0
2 hours, as they are entitled to do pursuant to Labor Code § 512. Mountain High also contends that
3 class certification would not be proper as individualized inquiries will be required to determine
4 why each second meal period was missed, and whether there was a valid waiver. In light of these
5 arguments and defenses, Plaintiffs discounted the maximum amount that the class could
6 potentially recover for second meal periods by 60% for a risk of non-certification, and an
7 additional 65% for a risk of losing on the merits, or having exposure reduced due to Mountain
8 High's waiver arguments, to arrive at an estimated exposure amount of approximately \$63,575.

9 19. Plaintiffs allege that Mountain High failed to authorize and permit third rest
10 periods on shifts in excess of 10.0 hours. Within these parameters, Plaintiffs' analysis of Mountain
11 High's timekeeping data revealed that there were approximately 42,075 shifts with potential non-
12 compliant rest periods. Therefore, Plaintiffs calculated Mountain High's maximum exposure on
13 this claim at approximately \$603,776 (42,075 shifts * \$14.35 premium). Mountain High argues
14 that it has always maintained and enforced lawful rest period policies and practices during the
15 Class Period. Mountain High also maintains that any failure to take rest periods was the result of
16 employee choice, and that it is not required to police rest periods. Finally, Mountain High
17 contends that Plaintiffs' rest period claim is not amenable to class treatment as individualized
18 inquiries would be required to determine which employees failed to take rest periods, and the
19 reasons why each employee failed to take a rest period on a particular shift. These considerations
20 are particularly present with respect to rest periods, Mountain High argues, as rest periods are not
21 – and need not be – recorded. In light of these defenses, Plaintiffs assessed a 65% risk of non-
22 certification, and discounted an additional 70% for risk of being unsuccessful on the merits or
23 failure to recover the full amount sought, to arrive at a projected exposure of approximately
24 \$63,396.

25 20. Plaintiffs allege Mountain High failed to reimburse necessary business expenses,
26 because Plaintiffs and other Settlement Class members employed as indoor employees were
27 required to purchase Mountain High branded jackets, and that all Settlement Class members were
28 required to use their personal cell phones and computers for a variety of work activities, including

checking their daily work schedules outside of working hours on an application called “When to Work.” Based on Plaintiffs’ analysis of the records produced by Mountain High, Plaintiffs determined that Settlement Class members worked approximately 19,125 months during the Class Period. Assuming a \$25.00 reimbursement per month for cellular phone data and personal internet data for work-related activities, Plaintiffs estimated Mountain High’s maximum exposure for its failure to reimburse cell phone and computer expenses at approximately \$478,125 (\$25.00 unreimbursed cellular phone data * 19,125 months). Additionally, based upon Plaintiffs’ analysis of the records provided by Mountain High, Plaintiffs determined that Mountain High’s maximum exposure for its failure to reimburse Settlement Class members for the cost of being required to purchase Mountain High branded jackets at approximately \$86,840 (2,171 indoor employed Settlement Class members * \$40/jacket). In total, Plaintiffs’ calculated Mountain High’s maximum exposure for this claim as \$564,965. Mountain High maintains that Settlement Class Members were not required to use their personal cellular phones or computers as part of their job, and that computers were available onsite to check employee schedules. Mountain High further argues that any cell phone expenses incurred by Settlement Class members were minimal, given the wide availability of low-cost cellular phone and internet data plans. Mountain High also argues that Settlement Class members employed as indoor employees were not required to purchase Mountain High branded jackets. Lastly, Mountain High argues this claim is not suitable for class treatment, as it would require individualized determinations as to whether each Settlement Class member employed as an indoor employee purchased a Mountain High branded jacket and whether each Settlement Class member used a personal cellular phone and/or personal computer for work-related purposes, and if so, how much of that use was a reasonable percentage of their individual monthly phone bill. In light of these arguments, Plaintiffs discounted Mountain High’s maximum exposure on this claim by 50% to account for a risk of non-certification, and by an additional 60% for risk of being unsuccessful on the merits, for a reasonably expected total of approximately \$112,993.

21. Plaintiffs argue that Mountain High maintained an unlawful policy/practice of rounding timekeeping entries to the nearest quarter of an hour up until December 2020. Based on

1 Plaintiffs' review of employee timekeeping records, Plaintiffs contend that Mountain High's
2 rounding practice resulted in approximately 2,878 net hours of unpaid wages. Thus, and based
3 upon the weighted average minimum wage during the Class Period, Plaintiffs estimate that
4 Mountain High's maximum exposure for this claim is approximately \$65,215 (2,878 hrs. * \$11.33
5 min. wage * 2 (liquidated damages per Labor Code § 1194.2). Mountain High raised several
6 defenses to this claim, including its argument that it utilized an even-handed timekeeping system
7 that, on balance, resulted in employees being paid for all hours actually worked; that some
8 employees were overpaid as a result its rounding practice; that employees did not perform any
9 work before the scheduled start of their shifts; and that Plaintiffs would be unable to certify this
10 claim given the individualized inquiries as to whether employees were in fact underpaid, or
11 overpaid for each workday in question. Based on these defenses, Plaintiffs discounted the
12 maximum exposure by 40% to account for the risk of non-certification, and an additional 40% to
13 account for Mountain High's defenses on the merits, to arrive at an estimated exposure of
14 approximately \$23,477.

15 22. Plaintiffs also allege that Mountain High is liable for wage statement penalties for
16 its failure to pay all wages owed and failure to pay all meal and rest period premiums. Plaintiffs'
17 analysis reflected that there were approximately 20,128 unique pay periods worked by Settlement
18 Class members within the one-year liability window under Labor Code § 226. In calculating
19 Mountain High's exposure, Plaintiffs assumed they could recover the "initial" \$50 penalty under
20 Section 226(e) for each violation, for a total of \$1,006,400 (20,128 pay periods * \$50) in potential
21 penalties. However, given Mountain High's arguments that no violations occurred, that
22 Settlement Class members suffered no "injury," that any violations were not "knowing and
23 intentional," as well as risks associated with Plaintiffs' underlying claims discussed above,
24 Plaintiffs discounted the maximum exposure by 65% for risk of non-certification, and by an
25 additional 70% for risks on the merits, for an estimated realistic exposure of \$105,672.

26 23. Plaintiffs further allege that Settlement Class members whose employment ended
27 since March 17, 2017, are entitled to a derivative "waiting time" penalty under Labor Code § 203.
28 Based on data produced by Mountain High, Plaintiffs' counsel estimates that there are

1 approximately 2,310 former Settlement Class members who worked for Mountain High since
2 March 17, 2017, and are therefore eligible for waiting time penalties. While analyzing this claim,
3 Plaintiffs took into consideration that Mountain High paid 124 former Settlement Class members
4 some waiting time penalties in the amount of \$159,627, for its failure to pay these employees for
5 time spent attending mandatory sexual harassment training in January 2020. Plaintiffs estimated
6 an average waiting time penalty of \$3,444 ($\$14.35/\text{hr} * 8 \text{ hrs} * 30 \text{ days}$), and calculated Mountain
7 High's maximum waiting time penalty exposure at approximately \$7,796,013 ($(2,310 \text{ separated}$
8 $\text{employees} * \$3,444 \text{ average waiting time penalty}) - \$159,627$). However, Mountain High asserts
9 it has strong, good-faith defenses to Plaintiffs' underlying claims and thus, even if Plaintiffs were
10 able to recover on their underlying claims, they would not be able to recover waiting time
11 penalties. Moreover, Plaintiffs would need to overcome Mountain High's defenses, both as to
12 class certification and as to the merits, to their underlying claims. Based on these defenses,
13 Plaintiffs discounted Mountain High's maximum exposure by 70% for risk of non-certification
14 and by an additional 80% for risk of being unsuccessful on the merits or failure to recover the full
15 amount sought, to arrive at an estimated total of \$467,761.

16 24. Finally, Plaintiffs allege a derivative claim for PAGA civil penalties. Plaintiffs
17 estimated a maximum total PAGA exposure at \$2,012,800 for the relevant time period ($20,128$
18 $\text{violations} * \$100 \text{ "initial" penalty}$). However, these penalties derive from the underlying wage
19 and hour violations discussed above, which Mountain High vigorously disputes. Mountain High
20 also asserts the Court would drastically reduce any award of PAGA penalties as "confiscatory."
21 Therefore, Plaintiffs discounted the maximum figure by 70% for risk of losing on the merits, and
22 an additional 75% to account for the possibility of this Court reducing penalties, to arrive at an
23 estimated exposure of \$150,960.

24 25. Using these figures, Plaintiffs estimated the realistic total recovery for the
25 Settlement Class would be approximately \$1,007,172. Thus, the proposed \$730,000.00 settlement
26 represents approximately 72.4% of the reasonably forecasted recovery. Particularly in light of
27 Mountain High's financial condition, the Settlement amount is substantial, and preliminary
28 approval is appropriate.

1 26. At final approval, Plaintiffs' counsel will apply for an attorneys' fees award of
2 one-third of the Gross Settlement Amount, which is currently estimated to be \$243,333.33, and
3 up to \$20,000.00 in verified costs reimbursement. Plaintiffs' counsel submits that the requested
4 fee is fair compensation for undertaking complex, risky, expensive, and time-consuming litigation
5 on a purely contingent fee basis. Plaintiffs' counsel has incurred substantial attorneys' fees
6 conducting pre-filing investigation, analyzing Plaintiffs' claims, conducting legal research,
7 propounding and responding to formal discovery, analyzing Settlement Class members'
8 timekeeping records, preparing for and attending mediation, negotiating and preparing the long-
9 form Settlement Agreement, preparing this Motion, and otherwise litigating the case. Plaintiffs'
10 counsel will also spend additional attorney time in attending the hearing on this Motion,
11 overseeing the Notice process and fielding questions from Settlement Class members, preparing
12 the Final Approval papers, and attending the Final Approval hearing.

13 27. Although the Parties engaged in significant formal and informal discovery in
14 advance of mediation, the Parties still had substantial discovery to complete in formal litigation
15 had the matter not settled. This would have required expenditure of substantial time and resources
16 by both Parties that would have very likely spanned several years. Even if Plaintiffs were to certify
17 the classes, the Parties would incur considerably more attorneys' fees and costs through a possible
18 decertification motion, trial, and possible appeal. This Settlement avoids those risks and the
19 accompanying expense.

20 28. Plaintiffs will also each request a service award of \$5,000.00 at final approval for
21 a total of \$10,000.00. As will be fully briefed at final approval, Plaintiffs' requested service
22 awards are in recognition of the time and effort they expended on behalf of the Settlement Class,
23 including providing factual information and documents to my office, responding to formal
24 discovery, identifying potential witnesses, communicating with my office to discuss the claims
25 and theories at issue in the litigation, and otherwise actively participating in the prosecution of
26 this litigation.

1 29. I am not aware of any conflict between myself or any member of my firm, Haines
2 Law Group, APC, and any member of the Settlement Class. Nor am I aware of any conflict
3 between Plaintiffs and any member of the Settlement Class.

4 30. Following Mountain High's representation of its financial position, Mountain
5 High turned over its financial records to Plaintiffs. Plaintiffs retained a forensic accountant, Keith
6 D. Messerschmidt, who has consulted or provided expert testimony in hundreds of litigation and
7 insurance matters. Mr. Messerschmidt opines that Mountain High could not reasonably afford to
8 pay more than the GSA and that the requested payment schedule was necessary for Mountain
9 High's ability to fund the Settlement while remaining in business and not dramatically impacting
10 its operations. Should the Court wish to review a declaration from Mr. Messerschmidt attesting
11 to these facts and Mountain High's financial condition, this declaration could either be filed in
12 *camera* or filed under seal, at the Court's request.

13 I declare under penalty of perjury under the laws of the State of California that the
14 foregoing is true and correct. Executed on September 14, 2022, at El Segundo, California.

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17 Paul K. Haines
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EXHIBIT 1

STIPULATION OF SETTLEMENT

This Stipulation of Settlement (“Settlement Agreement” or “Settlement”) is reached by and between Plaintiffs Cheryl Miller and Sherry Bamburg (“Plaintiffs”), individually and on behalf of all members of the Settlement Class (defined below), on one hand, and Defendant Mountain High Reunited, LLC (“Mountain High” or “Defendant”), on the other hand. Plaintiffs and Defendant are referred to herein collectively as the “Parties.” Plaintiff and the Settlement Class are represented by Paul K. Haines, Tuvia Korobkin, and Neil M. Larsen of Haines Law Group, APC and Joseph Tojarieh of Stonebrook Law (“Class Counsel”). Defendant is represented by Kathleen M. Hartman of Callahan Thompson Sherman & Caudill, LLP.

On March 17, 2020, Plaintiff Miller filed a class action lawsuit against Defendant in San Bernardino County Superior Court, in the matter titled *Cheryl Miller v. Mountain High Reunited, LLC*, Case No. CIVDS2010045 (the “Action” or “Lawsuit”). On August 18, 2020, Plaintiffs Miller and Bamburg filed the operative First Amended Class and Representative Action Complaint (“Complaint”) alleging the following causes of action: (1) minimum wage violations; (2) overtime violations; (3) meal period violations; (4) rest period violations; (5) failure to reimburse necessary business expenses; (6) wage statement penalties; (7) waiting time penalties; (8) unfair competition as a result of the aforementioned violations (Bus. & Prof. Code § 17200 *et seq.*); and (9) civil penalties pursuant to the Private Attorneys General Act of 2004 (“PAGA”), California Labor Code § 2698 *et seq.*, as a result of the aforementioned violations.

Mountain High denies the allegations in Action. By entering into this Agreement, there is no admission, express or implied, that Mountain High engaged in any wrong doing.

Given the uncertainty of litigation, Plaintiffs and Defendant wish to settle both individually and on behalf of the Settlement Class (defined below). Accordingly, Plaintiffs and Defendant agree as follows:

1. **Settlement Class.** For the purposes of this Settlement Agreement only, Plaintiffs and Defendant stipulate to the certification of the following Settlement Class:

All current and former non-exempt employees who worked for Defendant in California at any time from March 17, 2016 through November 2, 2021 (“Class Period”).

Defendant represents that there are approximately 3,062 Settlement Class members.

The Parties agree that certification for purposes of settlement is not an admission that class certification is proper under Section 382 of the Code of Civil Procedure. If for any reason this Settlement Agreement is not approved or is terminated, in whole or in part, this conditional agreement to class certification will be inadmissible and will have no effect in this matter or in any claims brought on the same or similar allegations, and the Parties shall revert to the respective positions they held prior to entering into this Settlement Agreement.

2. **Release by Settlement Class Members and Plaintiffs.** As of the date that: (i) the Effective Date (as defined below) occurs and (ii) the settlement is fully funded, Plaintiffs and the Settlement Class members will release and discharge Defendant and any of Defendant’s officers, directors,

employees, agents, principals, representatives, attorneys, accountants, partners, investors, shareholders, administrators, insurers and reinsurers, parent companies, subsidiaries, divisions, predecessors, successors, and assigns (collectively, the “Released Parties”), as follows:

- A. Settlement Class members (except those who opt-out) shall release any and all causes of action, claims, rights, or statutory damages, penalties, liabilities, expenses, and losses under California law that were alleged in the Action or that could have been alleged based on the facts alleged in the Action, including, but not limited to, any alleged failure by Defendant: (1) to pay minimum wages; (2) to pay overtime wages; (3) to provide meal periods; (4) to authorize and permit rest periods; (5) to indemnify or reimburse employees for work-related expenses; (6) to provide compliant wage statements; (7) to timely pay wages at the end of employment; and (8) any right or claim for unfair business practices in violation of California Business & Professions Code sections 17200, *et seq.*, based on the alleged failures set forth in (1) through (7) above (“Class Released Claims”). The release of the Class Released Claims shall apply for the duration of the Class Period. In addition, all Settlement Class members (whether or not they opt out) who worked for Defendant in California at any point from March 19, 2019 through the end of the Class Period (the “PAGA Period”) shall release any right or claim for civil penalties pursuant to the Private Attorneys General Act of 2004, California Labor Code § 2698, *et seq.* (“PAGA”), based on the alleged failures set forth in (1) through (7) above, arising from their employment with Defendant during the PAGA Period (“PAGA Released Claims”).
- B. In light of Plaintiffs’ Class Representative Service Awards, Plaintiffs have agreed to release, individually and in addition to the Class Released Claims and PAGA Released Claims described above, all claims, whether known or unknown, under federal law or state law, against the Released Parties, arising from their employment with Defendant, for the duration of the Class Period (“Plaintiffs’ Released Claims”). Plaintiffs and Defendant understand and agree that, by way of this release, Plaintiffs are not releasing, compromising, settling or resolving any claims for or related to workers’ compensation, any claims for unemployment insurance benefits, nor any other claims which cannot be released as a matter of law. Plaintiffs understand that this release includes unknown claims and that Plaintiffs are, as a result, waiving all rights and benefits afforded by Section 1542 of the California Civil Code, which provides:
- A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.**
- C. **Effective Date:** The “Effective Date” of the settlement agreement shall be the day after both of the following have occurred: (i) final approval of the settlement is granted by the Court, and (ii) judgment approving the settlement becomes Final. The term “Final” means: (i) if no objections are made to the Settlement, or if any objections to the Settlement are withdrawn, then the Settlement will be “Final” on

the date the Court enters judgment on the Settlement; (ii) if an objection is made to the Settlement and not withdrawn, and the objection is overruled by the Court with no appeal being taken, then the Settlement will be “Final” on the expiration date of the time for filing or noticing any appeal of the judgment; (iii) if there is an appeal of the Court’s judgment, the Settlement will be “Final” on the date the judgment is affirmed on appeal, the date of dismissal of such appeal, or the expiration of the time to file a petition for writ of certiorari to the California Supreme Court and/or United States Supreme Court; or (iv) if a petition for writ of certiorari is filed, the Settlement will be “Final” on the date of denial of the petition for writ of certiorari, or the date the judgment is affirmed pursuant to such petition.

3. **Gross Settlement Amount.** As consideration, Defendant agrees to pay a non-reversionary gross settlement amount (“Gross Settlement Amount”) of Seven Hundred Thirty Thousand Dollars and Zero Cents (\$730,000.00) in full and complete settlement of the Action, as follows:

- A. The Parties have agreed to engage Phoenix Settlement Administrators as the “Settlement Administrator” to administer this Settlement.

The Gross Settlement Amount shall be deposited into an escrow account to be established by the Settlement Administrator in two (2) equal installments, as follows: (i) one-half of the GSA (\$365,000.00) shall be deposited by Defendant on or before June 1, 2022; and (ii) one-half of the GSA (\$365,000.00) shall be deposited on or before June 1, 2023. Defendant shall pay the employer’s share of payroll taxes separately from, and in addition to, the GSA. The employer’s share of payroll taxes shall be paid by Defendant as coordinated with the Settlement Administrator after receipt of the calculation by the Settlement Administrator of the employer’s portion of the payroll taxes, but not later than the date the Individual Settlement Awards are mailed by the Settlement Administrator. Under no circumstances will Defendant’s payment under this Agreement be more than the Gross Settlement Amount (subject to the Escalator Clause below) and the employer’s portion of any payroll taxes on the amount designated as wages.

The two equal deposits shall be deposited into the escrow account regardless of whether the Effective Date occurs. If the Settlement does not receive final approval and the Effective Date does not occur, any installment payments paid to date shall be returned to Defendant along with any interest that accrued.

- B. This is a non-reversionary settlement. The Gross Settlement Amount includes:

- (1) All payments (including interest) to the Settlement Class;
- (2) All costs of the Settlement Administrator which are anticipated to be no greater than Twenty-Six Thousand Dollars and Zero Cents (\$26,000.00);
- (3) Up to Five Thousand Dollars and Zero Cents (\$5,000.00) to each Plaintiff, for Plaintiffs’ Class Representative Service Awards, individual release of all claims, Code of Civil Procedure section 1542 waiver, and in recognition of Plaintiffs’ contributions to the Action and service to the Settlement Class;

- (4) Up to one-third of the Gross Settlement Amount (currently estimated to be \$243,333.33) in Class Counsel's attorneys' fees, plus actual costs and expenses incurred by Class Counsel related to the Action as supported by declaration, which are currently estimated to be no greater than Twenty Thousand Dollars and Zero Cents (\$20,000.00); and
- (5) Forty Thousand Dollars and Zero Cents (\$40,000.00) of the Gross Settlement Amount has been set aside by the Parties as PAGA civil penalties. Per Labor Code § 2699(i), 75% of such penalties, or Thirty Thousand Dollars and Zero Cents (\$30,000.00), will be payable to the Labor & Workforce Development Agency ("LWDA"), and the remaining 25%, Ten Thousand Dollars and Zero Cents (\$10,000.00), will be payable to certain Settlement Class members as the "PAGA Amount," as described below.

The amounts described in Section 3.B.(1)-(5) are subject to Court approval. Defendant will not oppose the reasonableness of these requests. Any reduction by the Court of these requests will revert to the Net Settlement Amount (described below).

- E. **Employer Payroll Taxes.** The Gross Settlement Amount does not include employer-side payroll taxes that are part of any Individual Settlement Amount designated as wages, which shall be paid by Defendant separate from, and in addition to, the Gross Settlement Amount. The Settlement Administrator will calculate the amount of employer-side payroll taxes and provide that information to Defendant no later than five (5) business days prior to the Settlement Administrator mailing the Individual Settlement Awards as described below. The Defendant will deposit the amount of the employer-side payroll taxes with the Settlement Administrator (or into the designated settlement account) within three (3) business days of receipt of notification of the payroll tax amount.
- F. **Escalator Clause.** Defendant represents that as of November 2, 2021, there were approximately 3,062 Settlement Class members and that those Settlement Class members worked no more than 76,500 workweeks as non-exempt employees for Defendant in California ("Workweeks"). If the number of Settlement Class members as of November 2, 2021 was actually more than 5% greater than 3,062 (i.e., if there were more than 3,215 Settlement Class members hired by Defendant as of November 2, 2021), and/or if the number of Workweeks worked by Settlement Class members as of November 2, 2021 was more than 5% above 76,500 (i.e., if there were more than 80,325 Workweeks worked by Settlement Class members as of November 2, 2021), then the Gross Settlement Amount shall increase commensurate with the increase over 5% above either number. For example, if the number of Settlement Class members hired as of November 2, 2021 was actually 7% greater than 3,062, and/or if the number of Workweeks worked by Settlement Class members as of November 2, 2021 was 7% higher than 76,500, then the Gross Settlement Amount shall increase by 2%.

If it is determined that this Escalator Clause is triggered prior to the payment of either of the installment payments described in paragraph 3(A) above, then each installment payment shall increase in an equal amount to equal the increase in the GSA. For example, if by virtue of this Escalator Clause the GSA increases by \$10,000, and neither installment payments have been paid yet, then each installment enumerated in Paragraph 3(A) shall increase by \$5,000. If only one installment payment has been paid, then the second installment shall increase by the amount of the increase. If both installment payments have already been paid at the time it is determined that the Escalator Clause is triggered, then the increase to the GSA shall be deposited by Defendant within 21 days of that determination.

4. **Payments to the Settlement Class.** Settlement Class members are not required to submit a claim form to receive a payment (“Settlement Award”) from the Settlement. Settlement Awards will be determined and paid as follows:

A. The Settlement Administrator shall first deduct from the Gross Settlement Amount the amounts approved by the Court for Class Counsel’s attorneys’ fees, Class Counsel’s costs and expenses, the Class Representative Service Awards, the Settlement Administrator’s fees and expenses for administration, and the amount set aside as PAGA civil penalties. The remaining amount shall be known as the “Net Settlement Amount” or “NSA.” Settlement Awards will be the total of each Settlement Class member’s: (i) payment from NSA and (ii) payment, if any, from the PAGA Amount, as described below.

i. Payments from the Net Settlement Amount: The Settlement Administrator will calculate payments from the NSA based on each participating Settlement Class member’s proportionate Workweeks worked during the Class Period. Specifically, each participating Settlement Class member’s payment from the NSA will be calculated by multiplying the NSA by a fraction, the numerator of which is the participating Settlement Class member’s number of Workweeks worked during the Class Period, and the denominator of which is the total Workweeks worked by all participating Settlement Class members during the Class Period.

ii. Payments from the PAGA Amount: In addition to the NSA, 25% of the amount set aside as PAGA civil penalties (i.e., \$10,000.00) has been set aside as the “PAGA Amount,” as mentioned above. The PAGA Amount shall be paid to all Settlement Class members (regardless of whether they opt-out) who worked for Defendant at any time during the PAGA Period, based on their proportional number of pay periods worked for Defendant as a non-exempt employee in California during the PAGA Period (“Pay Periods”). Specifically, each Settlement Class member’s payment from the PAGA Amount will be calculated by multiplying the PAGA Amount by a fraction, the numerator of which is the Settlement Class member’s number of Pay Periods worked during the PAGA Period, and the denominator of which is the total Pay Periods worked by all Settlement Class members during the PAGA Period. The PAGA Period is defined as the Pay Periods from March 19, 2020, through November 2, 2021.

- B. **Calculation of Settlement Awards.** Within five (5) business days of the Effective Date, the Settlement Administrator will calculate Individual Settlement Award amounts (as described in 4.A.(i)-(ii) above) for all Settlement Class members, as well as the amount of the employer's share of payroll taxes due on the wage portion of the Individual Settlement Awards, and provide the same to counsel for review and approval.
- C. **Payment of Individual Settlement Awards.** Within twenty-one (21) days of: (i) the Effective Date occurring, (ii) Defendant's deposit of the Gross Settlement Amount (i.e., the two installment payments have been completed), and (iii) after approval by counsel of the Individual Settlement Award calculations, the Settlement Administrator will prepare and mail via First-Class U.S. mail Individual Settlement Awards, less applicable taxes and withholdings, to Settlement Class members. The Settlement Administrator shall simultaneously pay withholdings to the applicable authorities with the necessary reports, submitting copies to Defendant's counsel. The Settlement Administrator shall pay the amounts approved by the Court for Class Counsel's attorneys' fees and costs, Plaintiffs' Class Representative Service Awards, PAGA payment to the LWDA, and the Settlement administration costs to itself, at the same time it mails the Individual Settlement Awards to Settlement Class members. As noted above, Defendant shall have paid the employer's share of payroll taxes to the Settlement Administrator prior to the Settlement Administrator mailing Individual Settlement Awards to Settlement Class members.
- D. For tax purposes, each Individual Settlement Award shall be allocated as follows: any payment made from the PAGA Amount shall be treated as 100% penalties. Any payment made from the NSA shall be allocated as twenty percent (20%) wages, forty percent (40%) interest, and forty percent (40%) penalties. The Settlement Administrator will issue to Settlement Class members an IRS Form W-2 (for amounts paid as wages) and an IRS Form 1099 (for amounts paid as penalties and interest). Notwithstanding the treatment of the payments to each Settlement Class member above, none of the payments called for by this Settlement Agreement, including the wage portion, are to be treated as earnings, wages, pay or compensation for any purpose of any applicable benefit or retirement plan, including but not limited to, 401K benefits or matching benefits. Each Settlement Class member is responsible for the proper tax treatment of his/her Individual Settlement Award, and neither Plaintiffs, Defendant, nor their respective counsel are providing tax advice with respect to the tax treatment of Individual Settlement Awards. Each Settlement Class member agrees to hold harmless Plaintiffs, Defendant, and their respective counsel from any liability for taxes, fees, costs, or assessments resulting from his or her failure to timely pay his or her share of taxes, interest, fees, or penalties owed.
- E. Each member of the Settlement Class who receives an Individual Settlement Award must cash that check within 180 days from the date the Settlement Administrator mails the payment. Any funds payable to Settlement Class members whose checks are not cashed within 180 days after mailing shall be distributed to Legal Aid

Society of San Bernardino, as a *cy pres* beneficiary pursuant to Cal. Code Civ. Proc. § 384.

- F. The Settlement Administrator will undertake amended and/or supplement tax filings and reporting required under applicable local, state, and federal tax laws that are necessitated due to the cancellation of any Individual Settlement Award checks. To the extent the Settlement Administrator is able to obtain or receive the return or refund of the amounts that were transmitted to taxing authorities for the employer taxes and employees' share of taxes, contributions, and/or withholdings associated with cancelled Individual Settlement Awards, the employer taxes will be refunded to Defendant and the other money will be paid to Legal Aid as part of the *cy pres*.
- G. Neither Plaintiffs nor any of the Released Parties (nor their respective counsel) shall bear any liability for lost or stolen checks, forged signatures on checks, or unauthorized negotiation of checks. Unless responsible by its own acts of omission or commission, the same is true for the Settlement Administrator. If a check is re-issued for any reason, the 180-day time period to cash the check runs from the date the original Individual Settlement Award was mailed, or 15 business days after the re-issued check, whichever is later.

5. **Attorneys' Fees and Costs.** Defendant will not object to Class Counsel's request for a total award of attorneys' fees of up to one-third of the GSA, which is currently estimated to be \$243,333.33. Additionally, Class Counsel will request an award of actual costs and expenses as supported by declaration, in an amount not to exceed \$20,000.00, from the GSA. These amounts will cover any and all work performed and any and all costs incurred in connection with this litigation, including without limitation: all work performed and all costs incurred to date; and all work to be performed and costs to be incurred in connection with obtaining the Court's approval of this Settlement Agreement, including any objections raised and any appeals necessitated by those objections. Class Counsel will be issued an IRS Form 1099 by the Settlement Administrator when the Settlement Administrator pays the fee award approved by the Court.

6. **Class Representative Service Awards.** Defendant will not object to a request for a Class Representative Service Award to each Plaintiff of up to \$5,000.00 (totaling \$10,000.00), for their time and risk in prosecuting this case, their individual release of all claims, their Code of Civil Procedure section 1542 waiver, and their services to the Settlement Class. Plaintiffs' Class Representative Service Awards will be in addition to Plaintiffs' Individual Settlement Awards as Settlement Class members, and shall be reported on an IRS Form 1099 issued by the Settlement Administrator.

7. **Settlement Administrator.** Defendant will not object to the appointment of Phoenix Settlement Administrators as Settlement Administrator. Defendant will not object to Plaintiff seeking approval to pay up to \$26,000.00 for Phoenix Settlement Administrators' services from the GSA. The Settlement Administrator shall be responsible for sending Notice Packets to the Settlement Class members, calculating Individual Settlement Awards, preparing all checks and mailings, and other duties as described in this Settlement Agreement. The Settlement Administrator shall be authorized to pay itself from the GSA only after all Individual Settlement

Awards have been mailed to Settlement Class members and the PAGA payment is made to the LWDA. The Settlement Administrator shall also give notice of final judgment by posting the final judgment to its website.

8. **Preliminary Approval.** Within a reasonable time after execution of this Settlement Agreement by the Parties, Plaintiffs shall apply to the Court for the entry of an Order:

- A. Conditionally certifying the Settlement Class for settlement purposes only;
- B. Appointing Paul K. Haines, Tuvia Korobkin, and Neil M. Larsen of Haines Law Group, APC and Joseph Tojarieh of Stonebrook Law as Class Counsel;
- C. Appointing Plaintiffs as Class Representatives for the Settlement Class;
- D. Approving Phoenix Settlement Administrators as Settlement Administrator;
- E. Preliminarily approving this Settlement Agreement and its terms as fair, reasonable, and adequate;
- F. Approving the form and content of the Notice Packet (which is comprised of the Class Notice and Notice of Estimated Settlement Award, attached hereto as Exhibits A and B, respectively), and directing the mailing of the same; and
- G. Scheduling a Final Approval hearing.

9. **Notice to Settlement Class.** Following preliminary approval, the Settlement Class shall be notified as follows:

- A. Within ten (10) business days after entry of an order preliminarily approving this Settlement, Defendant will provide the Settlement Administrator with the names, ID numbers, last known addresses, phone numbers, social security numbers, and Workweek and Pay Period data (“Class Data”) for each Settlement Class member.
- B. Within ten (10) business days from receipt of this information, the Settlement Administrator shall: (i) run the names of all Settlement Class members through the National Change of Address (“NCOA”) database to determine any updated addresses for Settlement Class members; (ii) update the address of any Settlement Class member for whom an updated address was found through the NCOA search; (iii) calculate the estimated Individual Settlement Award for each Settlement Class member and receive approval from counsel of those calculations; and (iv) mail via First Class U.S. mail a Notice Packet to each Settlement Class member at his or her last known address or at the updated address found through the NCOA search, and retain proof of mailing.
- C. Requests for Exclusion. Any Settlement Class member who wishes to opt out of the class Settlement must complete and mail a Request for Exclusion (defined below) to the Settlement Administrator within sixty (60) calendar days of the date of the initial mailing of the Notice Packets (the “Response Deadline”).

- i. The Notice Packet shall state that Settlement Class members who wish to exclude themselves from the class Settlement must prepare and submit a Request for Exclusion by the Response Deadline. The Request for Exclusion must: (1) contain the name, address, telephone number and the last four digits of the Social Security number of the Settlement Class member; (2) contain a statement that the Settlement Class member wishes to be excluded from the Settlement; (3) be signed by the Settlement Class member; and (4) be postmarked by the Response Deadline and mailed to the Settlement Administrator at the address specified in the Class Notice. If the Request for Exclusion does not contain the information listed in (1)-(3), it will not be deemed valid for exclusion from the Settlement, except a Request for Exclusion not containing a Settlement Class member's last four digits of the Social Security number will be deemed valid. The date of the postmark on the Request for Exclusion shall be the exclusive means used to determine whether a Request for Exclusion has been timely submitted. Any Settlement Class member who requests to be excluded from the Settlement Class will not be entitled to any recovery under this Settlement Agreement (except for any amount due to him or her from the PAGA Amount, if applicable) and will not be bound by the terms of the Settlement (except for the release of the PAGA Released Claims, if applicable) or have any right to object, appeal, or comment on the Settlement Agreement.
 - ii. *Blow-Up Provision.* If more than 5% of all Settlement Class members validly elect to be excluded from the Settlement, Defendant shall have the option to rescind the Settlement, and the Parties will revert to the positions they held immediately prior to the Settlement's execution. In order to exercise this option, Defendant must communicate its intent to rescind the Settlement in writing to Class Counsel, no later than 10 business days after the Settlement Administrator first reports to the Parties that more than 5% of Settlement Class members have validly opted out of the Settlement. If Defendant exercises this option to rescind, Defendant shall be solely responsible to pay any costs incurred by the Settlement Administrator up to the date of the notice to rescind in connection with the Settlement.
 - iii. At no time will the Parties or their counsel seek to solicit or otherwise encourage any Settlement Class member to object to the Settlement or opt out of the Settlement Class or encourage any Settlement Class member to appeal from the final judgment.
- D. Objections. Members of the Settlement Class who do not opt-out may object to this Settlement Agreement as explained in the Class Notice by mailing a written objection to the Settlement Administrator. The Settlement Administrator shall serve all objections as received on Defendant's counsel and Class Counsel. Class Counsel is responsible for filing all such objections with the Court. Class Counsel will file the objections as soon as practicable but prior to the hearing on the Motion for Final Approval. Defendant's counsel and Class Counsel shall file any responses to objections no later than the deadline to file the Motion for Final Approval, unless the objections are submitted within ten (10) days of the Motion for Final Approval

filing deadline, in which case Defendant's counsel and Class Counsel shall have ten (10) days to file a response to the objections. To be valid, any objection must be in writing and must: (1) contain the objecting Settlement Class member's full name and current address, as well as contact information for any attorney representing the objecting Settlement Class member for purposes of the objection; (2) include all objections and the factual and legal bases for same; (3) include any and all supporting papers, briefs, written evidence, declarations, and/or other evidence; and (4) be postmarked no later than the Response Deadline. Objecting Settlement Class members may, but need not, appear at the Final Approval Hearing to argue their written objection. Any attorney seeking to represent an objecting Settlement Class member at the Final Approval Hearing must submit a Notice of Appearance to the Court and serve it on all counsel, no later than the Response Deadline.

- E. Notice of Estimated Settlement Award / Disputes. Each Notice Packet mailed to a Settlement Class member shall disclose the amount of the Settlement Class member's estimated Individual Settlement Award (excluding any tax calculations) as well as the information that was used to calculate the estimated Individual Settlement Award. Settlement Class members will have the opportunity, should they disagree with Defendant's records regarding the information stated in the Notice of Estimated Settlement Award, to provide documentation and/or an explanation to show contrary information. Any such dispute, including any supporting documentation, must be mailed to the Settlement Administrator and postmarked by the Response Deadline. If there is a dispute, the Settlement Administrator will consult with the Parties to determine whether an adjustment is warranted. If the Parties cannot agree, the Settlement Administrator shall determine the eligibility for, and the amounts of, any Settlement Awards under the terms of this Agreement. The Settlement Administrator's determination of the eligibility for and amount of any Settlement Award shall be binding upon the Settlement Class member and the Parties.
- F. Any Notice Packets returned to the Settlement Administrator as non-delivered on or before the Response Deadline shall be re-mailed to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator shall make reasonable efforts, including utilizing a "skip trace," to obtain an updated mailing address within five (5) business days of receiving the returned Notice Packet. If an updated mailing address is identified, the Settlement Administrator shall re-send the Notice Packet to the Settlement Class member within three (3) business days of obtaining the updated address. Settlement Class members to whom Notice Packets are re-sent after having been returned as undeliverable to the Settlement Administrator shall have fourteen (14) calendar days from the date of re-mailing, or until the Response Deadline has expired, whichever is later, to mail a Request for Exclusion, Objection, or dispute. Notice Packets that are re-sent shall inform the recipient of this adjusted deadline, if applicable. If a Settlement Class member's Notice Packet is returned to the Settlement Administrator more than once as non-deliverable, then an additional

Notice Packet need not be mailed. Nothing else shall be required of, or done by, the Parties, Class Counsel, or Defendant's Counsel to provide notice of the proposed settlement.

11. **Final Approval.** Following preliminary approval and the close of the period for submitting requests for exclusion, objections, or disputes under this Settlement Agreement, Plaintiff shall apply to the Court for entry of an Order:

- A. Granting final approval to the Settlement Agreement and adjudging its terms to be fair, reasonable, and adequate;
- B. Approving Plaintiffs' and Class Counsel's application for attorneys' fees and costs, Class Representative Service Awards, settlement administration costs, and payment to the LWDA for its share of civil penalties under PAGA; and
- C. Entering judgment pursuant to California Rule of Court 3.769. Said judgment shall be posted on the website of the Settlement Administrator.

Final Approval of the Settlement is a material and essential term. If the Court declines to grant preliminary and/or final approval of the Settlement, then the Parties shall have the right to revoke the Settlement. However, the Parties agree that if the Court declines to grant preliminary or final approval, the Parties will work together in good faith to amend the Settlement to remedy any issues raised by the Court, in order to obtain approval of the Settlement, before electing to revoke the Settlement. If the Settlement is revoked under this paragraph, the Parties shall split the cost of any Settlement Administrator fees incurred up to the date the Settlement Agreement is revoked.

12. **Non-Admission of Liability.** Nothing in this Settlement Agreement shall operate or be construed as an admission of any liability or wrongdoing or that class certification is appropriate in any context other than this Settlement. Each of the Parties has entered into this Settlement Agreement to avoid the burden and expense of further litigation. Pursuant to California Evidence Code Section 1152, this Settlement Agreement is inadmissible in any proceeding, except a proceeding to approve, interpret, or enforce this Settlement Agreement. If Final Approval does not occur, the Parties agree that this Settlement Agreement is void, but remains protected by California Evidence Code Section 1152.

13. **Waiver and Amendment.** The Parties may not waive, amend, or modify any provision of this Settlement Agreement except by a written agreement signed by counsel for all the Parties, and subject to any necessary Court approval. A waiver or amendment of any provision of this Settlement Agreement will not constitute a waiver of any other provision.

14. **Notices.** All notices, demands, and other communications to be provided concerning this Settlement Agreement shall be in writing and delivered by receipted delivery and by e-mail at the addresses set forth below, or such other addresses as either Party may designate in writing from time to time:

if to Plaintiffs:

Paul K. Haines
Haines Law Group, APC
2155 Campus Drive, Suite 1550, El Segundo, CA 90245
phaines@haineslawgroup.com

if to Defendant: Kathleen M. Hartman
Callahan Thompson Sherman & Caudill LLP
2601 Main Street, Suite 800, Irvine, CA 92614
khartman@ctsclaw.com

15. **Entire Agreement.** This Settlement Agreement contains the entire agreement between the Parties with respect to the transactions contemplated hereby, and supersedes all negotiations, presentations, warranties, commitments, offers, contracts, and writings prior to the date hereof relating to the subject matters hereof.

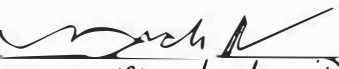
16. **Counterparts.** This Settlement Agreement may be executed by one or more of the Parties on any number of separate counterparts and delivered electronically, and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

17. **Nondisclosure and Nonpublication.** Class counsel shall not publicize the settlement on their website or in advertising/marketing materials, other than filing documents with the Court. Plaintiffs and Class Counsel agree that they will not issue any press releases or initiate any contact with the media about the fact, amount, or terms of the settlement. If Plaintiffs or Class Counsel receive an inquiry about the Settlement from the media, they may respond only after the motion for preliminary approval has been filed and only by confirming the accurate terms of the Settlement. Nothing in this provision shall prevent Defendant from making any required disclosure. Nothing shall prevent Class Counsel from including a general description of the Settlement on their website, without the mention of the names of the parties or the case number. Nor shall anything in this Settlement prevent Class Counsel from referring to this case in a declaration establishing qualification as class counsel in future cases.

18. **Enforcement and Continuing Jurisdiction of the Court.** To the extent consistent with class action procedure, this Settlement Agreement shall be enforceable by the Court pursuant to California Code of Civil Procedure section 664.6. The Court shall retain continuing jurisdiction over this Action and over all Parties and Settlement Class members, to the fullest extent to enforce and effectuate the terms and intent of this Settlement Agreement, and to adjudicate any claimed breaches of this Settlement Agreement. The Court shall award reasonable attorneys' fees and costs to the prevailing party in any motion or action taken based on an alleged violation of, or failure to conform with, any material term of this Settlement Agreement.

DATED: 5.27, 2022

MOUNTAIN HIGH REUNITED, LLC

By: 
Name Michele Roy
Title: CEO, Sr. Vice Pres

DATED: _____, 2022

PLAINTIFF CHERYL MILLER

By: _____
Plaintiff and Settlement Class Representative

if to Defendant: Kathleen M. Hartman
Callahan Thompson Sherman & Caudill LLP
2601 Main Street, Suite 800, Irvine, CA 92614
khartman@ctsclaw.com

15. **Entire Agreement.** This Settlement Agreement contains the entire agreement between the Parties with respect to the transactions contemplated hereby, and supersedes all negotiations, presentations, warranties, commitments, offers, contracts, and writings prior to the date hereof relating to the subject matters hereof.

16. **Counterparts.** This Settlement Agreement may be executed by one or more of the Parties on any number of separate counterparts and delivered electronically, and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

17. **Nondisclosure and Nonpublication.** Class counsel shall not publicize the settlement on their website or in advertising/marketing materials, other than filing documents with the Court. Plaintiffs and Class Counsel agree that they will not issue any press releases or initiate any contact with the media about the fact, amount, or terms of the settlement. If Plaintiffs or Class Counsel receive an inquiry about the Settlement from the media, they may respond only after the motion for preliminary approval has been filed and only by confirming the accurate terms of the Settlement. Nothing in this provision shall prevent Defendant from making any required disclosure. Nothing shall prevent Class Counsel from including a general description of the Settlement on their website, without the mention of the names of the parties or the case number. Nor shall anything in this Settlement prevent Class Counsel from referring to this case in a declaration establishing qualification as class counsel in future cases.

18. **Enforcement and Continuing Jurisdiction of the Court.** To the extent consistent with class action procedure, this Settlement Agreement shall be enforceable by the Court pursuant to California Code of Civil Procedure section 664.6. The Court shall retain continuing jurisdiction over this Action and over all Parties and Settlement Class members, to the fullest extent to enforce and effectuate the terms and intent of this Settlement Agreement, and to adjudicate any claimed breaches of this Settlement Agreement. The Court shall award reasonable attorneys' fees and costs to the prevailing party in any motion or action taken based on an alleged violation of, or failure to conform with, any material term of this Settlement Agreement.

DATED: _____, 2022

MOUNTAIN HIGH REUNITED, LLC

By: _____
Name: _____
Title: _____

DATED: 06/02, 2022

PLAINTIFF CHERYL MILLER

By:  _____
Cheryl A. Miller (Jun 2, 2022 13:20 PDT)
Plaintiff and Settlement Class Representative

DATED: 06/02, 2022

PLAINTIFF SHERRY BAMBURG

By: 
sherry bamburg (Jun 2, 2022 12:49 PDT)
Plaintiff and Settlement Class Representative

APPROVED AS TO FORM ONLY:

DATED: _____, 2022

CALLAHAN THOMPSON SHERMAN &
CAUDILL

By: _____
Kathleen M. Hartman
Attorneys for Defendant

DATED: 06/07, 2022

HAINES LAW GROUP, APC

By: 

Paul K. Haines
Attorneys for Plaintiffs

DATED: _____, 2022

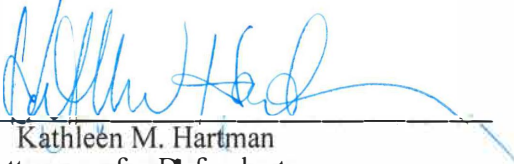
PLAINTIFF SHERRY BAMBURG

By: _____
Plaintiff and Settlement Class Representative

APPROVED AS TO FORM ONLY:

DATED: 5/27, 2022

CALLAHAN THOMPSON SHERMAN &
CAUDILL

By: 
Kathleen M. Hartman
Attorneys for Defendant

DATED: _____, 2022

HAINES LAW GROUP, APC

By: _____
Paul K. Haines
Attorneys for Plaintiffs

EXHIBIT A

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN BERNARDINO

CHERYL MILLER, ET AL.

Plaintiffs,

vs.

MOUNTAIN HIGH REUNITED, LLC

Defendant.

Case No. CIVDS2010045

**NOTICE OF PENDENCY OF CLASS ACTION
AND PROPOSED SETTLEMENT**

To: All current and former non-exempt employees who worked for Defendant Mountain High Reunited, LLC ("Mountain High") in California at any time from March 17, 2016 through November 2, 2021 ("Class Period").

**PLEASE READ THIS NOTICE CAREFULLY.
YOUR LEGAL RIGHTS MAY BE AFFECTED WHETHER YOU ACT OR NOT.**

Why should you read this Notice?

The San Bernardino County Superior Court ("Court") has granted preliminary approval of a proposed class action settlement (the "Settlement") in *Cheryl Miller, et al. v. Mountain High Reunited, LLC*, San Bernardino County Superior Court Case No. CIVDS2010045 (the "Action"). Because your rights may be affected by the Settlement, it is important that you read this Notice carefully.

You may be entitled to money from the Settlement. Mountain High's records show that you were employed by Mountain High in California at some point between March 17, 2016 through November 2, 2021, and are therefore part of the proposed "Settlement Class." The Court ordered that this Notice be sent to you because you may be entitled to money under the Settlement and because the Settlement affects your legal rights.

The purpose of this Notice is to provide you with a brief description of the Action, to inform you of the terms of the proposed Settlement, to describe your rights in connection with the Settlement, and to explain what steps you may take to participate in, object to, or exclude yourself from the Settlement. If you do not exclude yourself from the Settlement and the Court finally approves the Settlement, you will be bound by the terms of the Settlement and any final judgment. If final judgment is entered in this case, it will be posted to the Settlement Administrator's website, [\[website\]](#).

What is this case about?

Plaintiffs Cheryl Miller and Sherry Bamburg ("Plaintiffs") have filed a lawsuit alleging that Mountain High violated California law by: (1) failing to pay minimum wages; (2) failing to pay all overtime wages; (3) failing to provide meal periods; (4) failing to authorize and permit rest periods; (5) failing to reimburse necessary business expenses; (6) failing to issue accurate itemized wage statements; (7) failing to pay all wages owing upon separation of employment; and, as a result of the above, (8) engaging in unlawful business practices. In addition, Plaintiffs seek recovery of derivative civil penalties under the California Labor Code Private Attorneys General Act, Labor Code § 2698 *et seq.* ("PAGA"), interest, and attorneys' fees and costs. Plaintiffs are known as the "Class Representatives." Plaintiffs' attorneys, who also represent the interests of all Settlement Class members, are known as "Class Counsel."

Mountain High has denied, and continue to deny, that it has done anything wrong, and believes that it has acted in compliance with all applicable laws and that Plaintiffs' claims have no merit. Mountain High also denies that it owes any wages, restitution, penalties, or other damages. By agreeing to settle, Mountain High is not admitting liability on any of the factual allegations or claims asserted in the Action or that the Action can or should proceed as a class action in a non-settlement context.

The Court has not ruled on the merits of Plaintiffs' claims. However, to avoid additional expense, inconvenience, and interference with its business operations, Mountain High has concluded that it is in its

best interests to settle the Action on the terms summarized in this Notice. After Mountain High provided relevant information to Class Counsel, the Settlement was reached after mediation and arm's-length negotiations between the Parties.

The Class Representatives and Class Counsel also support the Settlement. Among the reasons for support are the defenses to liability potentially available to Defendant, the risk of denial of class certification, the inherent risks of trial on the merits, and the delays and uncertainties associated with litigation.

If you are still employed by Mountain High, your decision about whether to participate in the Settlement will not affect your employment. California law strictly prohibits unlawful retaliation. Mountain High will not take any adverse employment action against or otherwise target, retaliate, or discriminate against any Settlement Class member because of the Settlement Class member's decision to either participate or not participate in the Settlement.

Who are the Attorneys?

Attorneys for Plaintiffs / the Settlement Class: HAINES LAW GROUP, APC Paul K. Haines phaines@haineslawgroup.com Tuvia Korobkin tkorobkin@haineslawgroup.com Neil M. Larsen nlarsen@haineslawgroup.com 2155 Campus Drive, Suite 180 El Segundo, California 90245 Tel: (424) 292-2350 Fax: (424) 292-2355 www.haineslawgroup.com	Attorneys for Mountain High: CALLAHAN THOMPSON SHERMAN & CAUDILL LLP Kathleen M. Hartman khartman@ctsclaw.com 2601 Main Street, Suite 800 Irvine, California 92614 Tel.: (949) 261-2872 www.ctsclaw.com
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What are the terms of the Settlement?

On <<PRELIM APPROVAL DATE>>, the Court granted preliminary approval of the Settlement on behalf of a Settlement Class consisting of all current and former non-exempt employees who worked for Mountain High in California at any time from March 17, 2016 through November 2, 2021 (the "Class Period"). Settlement Class members who do not opt out of the Settlement pursuant to the procedures set forth in this Notice will be bound by the Settlement and will release claims against Mountain High as specifically described below.

Mountain High has agreed to pay \$730,000.00 (the "Gross Settlement Amount") to fully resolve all claims in the Action, including claims by Settlement Class members, attorneys' fees, costs, settlement administration costs, PAGA civil penalties, and the Class Representatives' service awards.

The following deductions from the Gross Settlement Amount will be requested by the parties:

Settlement Administration Costs. The Court has approved **Phoenix Settlement Administrators** to act as the "Settlement Administrator," who is sending this Notice to you and will perform many other duties relating to the Settlement. The Court has approved setting aside up to \$26,000.00 from the Gross Settlement Amount to pay the Settlement administration costs.

Attorneys' Fees and Expenses. Class Counsel will ask for fees of up to one-third of Gross Settlement Amount, currently estimated to be \$243,333.33, as reasonable compensation for the work Class Counsel performed, and will continue to perform, in this Action through Settlement finalization. Class Counsel also will ask for reimbursement of up to \$20,000.00 of verified costs Class Counsel incurred in connection with the Action.

Class Representatives Enhancement Awards. Class Counsel will ask the Court to approve an enhancement award of up to \$5,000 to each Class Representative (\$10,000 total). These awards are to

compensate the Class Representatives for their service and extra work provided on behalf of the Settlement Class members.

PAGA Civil Penalties. The Parties have agreed to allocate \$40,000.00 of the Gross Settlement Amount as civil penalties for the settlement of Plaintiff's PAGA claim. Pursuant to the requirements of the PAGA, 75% of that amount, or \$30,000.00, will be paid to the California Labor & Workforce Development Agency ("LWDA"). The remaining \$10,000.00 has been designated as the "PAGA Amount" and will be paid to certain Settlement Class members as described below.

Calculation of Settlement Class Members' Settlement Payments. After deducting the Court-approved amounts above, the balance of the Gross Settlement Amount will form the Net Settlement Amount ("NSA"), which will be distributed to all Settlement Class members who do not submit a valid and timely Request for Exclusion (described below). The NSA is estimated to be approximately \$390,666.67. Together with the \$10,000.00 PAGA Amount, the total amount to be distributed to Settlement Class members is estimated to be \$400,666.67. Payments to Settlement Class members will be calculated as follows:

- (i) The NSA will be allocated proportionally to all participating Settlement Class members (i.e., those who do not opt out) based on each Settlement Class member's total weeks worked for Mountain High in California as a non-exempt employee ("Workweeks") during the Class Period.
- (ii) In addition to the NSA, \$10,000.00 of the Gross Settlement Amount has been designated as the "PAGA Amount" as described above, and will be allocated to all Settlement Class members (regardless whether they opt out) who worked for Mountain High in California at any time from March 19, 2019 through the end of the Class Period (the "PAGA Period"), in proportion to the number of pay periods that each Settlement Class member worked for Mountain High in California as a non-exempt employee ("Pay Periods") during that time period.

Deposit of Gross Settlement Amount. The Settlement will be funded by Mountain High in two (2) equal installments of \$365,000.00, with the first installment due on June 1, 2022 and the second installment due on June 1, 2023.

Payments to Settlement Class Members: Settlement Class members payments, known as "Settlement Awards," will be mailed approximately twenty-one (21) days after Mountain High deposits the entirety of the Gross Settlement Amount with the Settlement Administrator.

Allocation and Taxes. For tax purposes, Settlement Awards shall be treated as follows: all amounts paid from the PAGA Amount will be treated as 100% penalties. Any payment from the NSA shall be treated as twenty percent (20%) wages, forty percent (40%) penalties and forty percent (40%) interest. The Settlement Administrator will issue IRS forms W-2 for all amounts designated as "wages," and will issue IRS forms 1099 for all amounts designated as penalties and interest. Settlement Class members are responsible for the proper income tax treatment of the Settlement Awards. The Settlement Administrator, Defendant and their counsel, and Plaintiffs and Class Counsel cannot provide tax advice. Accordingly, Settlement Class members should consult with their tax advisors concerning the tax consequences and treatment of payments they receive under the Settlement.

Release. Once the Effective Date occurs and Mountain High fully funds the Settlement, the Class Representatives and every member of the Settlement Class (except those who opt out) will release and discharge Mountain High and any of its officers, directors, employees, agents, principals, representatives, attorneys, accountants, partners, investors, shareholders, administrators, insurers and reinsurers, parent companies, subsidiaries, divisions, predecessors, successors, and assigns (collectively, the "Released Parties") from any and all causes of action, claims, rights, or statutory damages, penalties, liabilities, expenses, and losses under California law that were alleged in the operative complaint in the Action or that could have been alleged based on the facts alleged in the operative complaint in the Action, including, but not limited to, any alleged failure by Mountain High: (1) to pay minimum wages; (2) to pay overtime wages; (3) to provide meal periods; (4) to authorize and permit rest periods; (5) to indemnify or reimburse employees for work-related expenses; (6) to provide compliant wage statements; (7) to timely pay wages at the end of employment; and (8) any right or claim for unfair business practices in violation of California Business & Professions Code sections 17200, *et seq.*, based on the alleged failures set forth in (1) through (7) above

("Class Released Claims"). The release of the Class Released Claims shall apply for the duration of the Class Period. In addition, all Settlement Class members (whether or not they opt out) who worked for Mountain High in California at any during the PAGA Period shall release any right or claim for civil penalties pursuant to the PAGA, based on the alleged failures set forth in (1) through (7) above, arising from their employment with Mountain High during the PAGA Period ("PAGA Released Claims").

Conditions of Settlement. By granting preliminary approval of the Settlement, the Court has determined that the Settlement falls within the range of possible approval as fair, reasonable, and adequate. This Settlement is conditioned upon the Court entering an order at or following the Final Approval Hearing finally approving the Settlement.

How can I receive money from the Settlement?

Do Nothing. You do not need to do anything if you want to receive payment from and participate in the Settlement. If you do nothing, you will be entitled to your individual Settlement Award based on the number of Workweeks you worked for Defendant as a non-exempt employee in California during the Class Period and the number of pay periods you worked for Defendant as a non-exempt employee in California during the PAGA Period. Your estimated individual Settlement Award is included in the enclosed Notice of Estimated Settlement Award. You also will be bound by the Settlement, including the release of claims stated herein.

Check Cashing Deadline and Uncashed Checks. You must cash or deposit your Settlement Award check within 180 days from the date that the Settlement Administrator mails the check to you. If you do not cash or deposit your check within 180 days, your check will be voided and the funds from the check will be sent to *cy pres* recipient Legal Aid Society of San Bernardino, a non-profit organization that provides legal services to indigent residents of San Bernardino County.

What other options do I have?

Disputing Information in Notice of Estimated Individual Settlement. Your estimated Settlement Award has been calculated and is included in the enclosed Notice of Estimated Settlement Award. As stated above, your estimated Settlement Award is based on the number of workweeks you worked for Mountain High as a non-exempt employee in California during the Class Period and the number of pay periods, if any, you worked for Mountain High as a non-exempt employee in California during the PAGA Period. The information contained in Mountain High's records regarding each of these factors is listed on the accompanying Notice of Estimated Settlement Award. If you disagree with the information in your Notice of Estimated Settlement Award, you may submit a dispute, along with any supporting documentation, in accordance with the procedures stated in the Notice of Estimated Settlement Award. Any disputes, along with supporting documentation, must be postmarked no later than **<<RESPONSE DEADLINE>>**. **DO NOT SEND ORIGINALS; DOCUMENTATION SENT TO THE SETTLEMENT ADMINISTRATOR WILL NOT BE RETURNED OR PRESERVED.** The parties and the Settlement Administrator will evaluate the evidence submitted and discuss in good faith how to resolve any disputes submitted by Settlement Class members. The Settlement Administrator's decision regarding any dispute will be final.

Exclude Yourself from the Settlement. If you **do not** wish to take part in the class portion of the Settlement, you may exclude yourself by sending to the Settlement Administrator a written "Request for Exclusion" letter or postcard, postmarked no later than **<<RESPONSE DEADLINE>>**, with your full name (as well as any former names you used while you were employed by Defendant), your current address, telephone number, last 4 digits of your social security number, and your signature.

Send the Request for Exclusion directly to the Settlement Administrator at **<<INSERT ADMINISTRATOR CONTACT INFO>>**. Any person who submits a valid and timely Request for Exclusion shall, upon receipt, no longer be a Settlement Class member with respect to the class claims alleged, shall be barred from participating in the class portion of the Settlement, and shall receive no benefits from the class portion of the Settlement. Any person who submits a valid and timely Request for Exclusion will also lack standing to submit any objection to the Settlement. However, all Settlement Class members who worked for Mountain High during the PAGA Period, including those who opt out, will be bound by the PAGA portion of the Settlement and will receive a portion from the PAGA Amount.

Objecting to the Settlement. If you do not submit a Request for Exclusion, you have the right to object to the terms of the Settlement. However, if the Court rejects your objection, you will still be bound by the terms of

the Settlement. If you wish to object to the Settlement, or any portion of it, you must mail a written Objection to the Settlement Administrator. Your written Objection must include your full name (as well as any former names used while employed by Mountain High), current address and phone number, last 4 digits of your social security number, the name and contact information of any attorney representing you, the case name and number, each specific reason in support of your objection, and any legal or factual support for each objection, including any supporting papers, briefs, written evidence, declarations, and/or other evidence. All objections or other correspondence must state the name and number of the case, which is *Miller v. Mountain High Reunited, LLC*, San Bernardino County Superior Court Case No. CIVDS2010045. Any Objections must be in writing and must be postmarked on or before <<RESPONSE DEADLINE>>.

If you choose to object to the Settlement, you may also appear at the Final Approval Hearing. You have the right to appear either in person or through your own attorney at this hearing. If you wish to appear at the Final Approval Hearing and/or retain an attorney to represent you at the hearing, you must do so at your own expense. Any attorney who intends to represent an individual objecting to the Settlement must file a notice of appearance with the Court and serve counsel for all parties on or before <<RESPONSE DEADLINE>>.

If you object to the Settlement, you will remain a member of the Settlement Class, and if the Court approves the Settlement, you will be bound by the terms of the Settlement in the same way as Settlement Class members who do not object. In other words, by submitting an Objection, you are not excluding yourself from the Settlement.

What is the next step?

The Court will hold a Final Approval Hearing on the adequacy, reasonableness, and fairness of the Settlement on <<FINAL APPROVAL HEARING DATE/TIME>>, in Department S26 of the San Bernardino County Superior Court, located at 247 West Third Street, San Bernardino, CA 92415. At the Final Approval Hearing, the Court also will be asked to rule on Class Counsel's request for attorneys' fees and reimbursement of expenses, the service awards to the Class Representatives, and the Settlement administration costs. The Final Approval Hearing may be postponed without further notice to the Settlement Class. **You are not required to attend the Final Approval Hearing, although any Settlement Class member is welcome to attend the hearing at their own expense.**

If you plan on attending the hearing in person or otherwise visiting the Court, please consult the Court's website, <https://www.sb-court.org>, for information regarding court operations during COVID-19 as well as any face covering and social distancing requirements.

How can I get additional information?

This Notice is only a summary of the Action and the Settlement. For more information, you may inspect the Court's files and the Settlement Agreement at the Clerk's Office at the San Bernardino County Superior Court, located at 247 West Third Street, San Bernardino, CA 92415, during regular Court hours. You may also contact the Settlement Administrator or Class Counsel using the contact information listed above for more information.

PLEASE DO NOT CALL OR WRITE THE COURT FOR INFORMATION ABOUT THIS SETTLEMENT.

REMINDER AS TO TIME LIMITS

The deadline for submitting any Disputes, Requests for Exclusion, or Objections is <<RESPONSE DEADLINE>>. These deadlines will be strictly enforced.

EXHIBIT B

NOTICE OF ESTIMATED SETTLEMENT AWARD

CHERYL MILLER, ET AL. v. MOUNTAIN HIGH REUNITED, LLC
SAN BERNARDINO COUNTY SUPERIOR COURT CASE NO. CIVDS2010045

Please complete, sign, and return this Form to <<ADMINISTRATOR CONTACT INFO>> **ONLY IF** (1) your personal contact information has changed, and/or (2) you wish to dispute any of the items listed in Section (III), below. It is your responsibility to keep a current address on file with the Settlement Administrator.

(I) Please type or print your name:

(First, Middle, Last)

(II) Please type or print the following identifying information if your contact information has changed:

Former Names (if any)

New Street Address

City

State

Zip Code

Phone number (if you wish to be contacted by phone)

(III) Information Used to Calculate Your Estimated Individual Settlement:

According to Defendant Mountain High Reunited, LLC's ("Maountin High") records:

- (a)** you worked [REDACTED] Workweeks for Mountain High as a non-exempt employee in California between March 17, 2016 and November 2, 2021; and
- (b)** you worked [REDACTED] pay periods for Mountain High as a non-exempt employee in California between March 19, 2019 and November 2, 2021.

Based on the above, your Settlement Award is estimated at \$ [REDACTED].

(IV) If you disagree with items (a) or (b) in Section (III) above, please explain why in the space below and include copies of any supporting evidence or documentation with this Form:

If you dispute the above information from Mountain High's records, Maountain High's records will control unless you are able to provide documentation that establishes that Mountain High's records are mistaken. If there is a dispute about whether Mountain High's information or yours is accurate, the dispute will be resolved by the Parties and the Settlement Administrator as described in the "Notice of Pendency of Class Action and Proposed Settlement" that accompanies this Form. The Settlement Administrator's determination will be final.

Date: _____

Signature: _____

ANY DISPUTES (INCLUDING SUPPORTING DOCUMENTS) MUST BE POSTMARKED NO LATER THAN <<RESPONSE DEADLINE>>.

EXHIBIT 2

HAINES LAW GROUP
EMPLOYMENT ATTORNEYS

March 19, 2020

VIA LWDA WEBSITE

Labor and Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

Re: *Cheryl Miller v. Mountain High Reunited, LLC, et al.*

To Whom It May Concern:

Please be advised that this law firm represents Cheryl Miller (“Ms. Miller”) in claims arising from her employment with Mountain High Reunited, LLC, and Does 1 through 100 (collectively, “Mountain High”). Ms. Miller is an “aggrieved employee” as defined by Labor Code Section 2698 *et seq.*, due to Mountain High’s numerous violations of the Labor Code as set forth below. The purpose of this letter is to comply with Labor Code Section 2699.3, which requires aggrieved employees to notify their employer and the Labor & Workforce Development Agency (“LWDA”) of the specific provisions of the Labor Code allegedly violated. The “aggrieved employees” whom Ms. Miller seeks to represent are all current and former non-exempt employees of Mountain High who performed work for Mountain High in the State of California during the one year immediately preceding the date of this letter through the present.

Mountain High employed Ms. Miller as a non-exempt employee from approximately November 16, 2019 to approximately December 19, 2019. For at least a portion of her employment with Mountain High, Ms. Miller recorded her hours worked by using Mountain High’s electronic timekeeping system that required her to scan her fingerprint and type in her employee identification number. Notwithstanding that Mountain High recorded Ms. Miller’s hours worked to the minute, Mountain High systematically underpaid Ms. Miller through a policy and/or practice of rounding and/or time-shaving, such that Ms. Miller was typically paid in quarter hour increments. As a result, Mountain High regularly, systematically, and impermissibly rounded the hours worked by Ms. Miller and other aggrieved employees in Mountain High’s favor, such that the rounding and/or time-shaving practice utilized by Mountain High was not even-handed over time and would round and shave in Mountain High’s favor such that Mountain High routinely underpaid Ms. Miller for her time worked. Due to Mountain High’s timekeeping policies and/or practices that fail to compensate for all hours worked, Ms. Miller and other aggrieved employees were deprived of all required minimum and overtime wages.

Mountain High also failed to authorize and permit Ms. Miller and other aggrieved employees all required rest periods, because Mountain High failed to authorize and permit Ms. Miller and other aggrieved employees to take a third rest period on shifts over 10.0 hours. On those occasions when Mountain High failed to authorize and permit Ms. Miller and other aggrieved employees all legally-compliant rest periods to which they were entitled, Mountain High failed to compensate employees with the required rest period premium for each workday in which they experienced a rest period violation as mandated by Labor Code § 226.7. Further, upon information and belief, during at least a portion of the relevant time period, Mountain High failed to maintain any pay code or other mechanism for the payment of rest period premiums when they failed to provide Ms. Miller and other aggrieved employees with legally-compliant rest periods.

Mountain High also failed to reimburse and/or indemnify Ms. Miller and other aggrieved employees for all reasonable and necessary work expenditures. For example, Mountain High required Ms. Miller and other aggrieved employees who work indoors to purchase a Mountain High branded jacket for approximately \$40.00 at the start of their respective tenures with Mountain High, and did not reimburse Ms. Miller or other aggrieved employees for this expense. Mountain High also failed to indemnify Ms. Miller and other aggrieved employees for other reasonable and necessary business expenses, including, but not limited to, personal cellular phone and/or personal computer expenses. Specifically, Mountain High required Ms. Miller and other aggrieved employees to view their daily work schedules on an application called “Win to Work,” either through an app on their personal cellular phone or on their personal computer. Notwithstanding that Mountain High required Ms. Miller and aggrieved employees to use their personal equipment and/or funds for work purposes, Mountain High failed to reimburse employees for these expenses. Therefore, Ms. Miller and other aggrieved employees are entitled reimbursement pursuant to Labor Code § 2802.

As a result of Mountain Highs’ failure to pay all overtime and minimum wages, as well as rest period premiums, Mountain High failed to pay all wages to Ms. Miller and other formerly-employed other aggrieved employees at the separation of their employment, and failed to furnish complete and accurate, itemized wage statements to Ms. Miller and other aggrieved employees.

Ms. Miller is informed and believes that Mountain High continues to commit the violations described herein. As described above, Mountain High committed, and continues to commit, the following violations of the Labor Code and Industrial Welfare Commission Wage Order No. 10 (“Wage Order 10”):

Overtime Violations

Mountain High is required to compensate non-exempt employees, including Ms. Miller and other aggrieved employees, for all overtime hours worked pursuant to Labor Code §§ 204, 510, 558, 1194, 1198, and Wage Order 10. Wage Order 10, § 3 requires an employer to pay an employee “one and one-half (1½) times [the] employee’s regular rate of pay” for work in excess of 8 hours per workday or over 40 hours in a workweek, and

for the first eight (8) hours on the seventh (7th) day of work. Wage Order 10, § 3 also requires an employer to pay an employee double the employee's regular rate of pay for work in excess of 12 hours on any workday and for work in excess of eight hours on the seventh consecutive day of work in the workweek.

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

As alleged above Mountain High caused Ms. Miller and other aggrieved employees to work overtime hours, but did not compensate them at one and one-half times (or two times, in the case of double time) their respective regular rates of pay for such hours.

Minimum Wage Violations

Mountain High was, and is, required to pay Ms. Miller and other aggrieved employees an hourly rate at least equal to the minimum wage for each hour worked. *See* Labor Code §§ 1182.12, 1194, 1194.2, 1197, 1198, and Wage Order 10, § 4. As alleged above, Mountain High maintained, and continues to maintain, timekeeping policies/practices and pay policies/practices that have regularly, systematically, and impermissibly failed to compensate Ms. Miller and other aggrieved employees at least the minimum wage for all hours worked. As a result of these policies/practices, Ms. Miller and other aggrieved employees have been, and continue to be, deprived of all required minimum wages.

Rest Period Violations

As alleged above, Mountain High has also failed to authorize and permit Ms. Miller and other aggrieved employees to take all required rest periods, as required under Labor Code §§ 226.7 and 516 and Wage Order 10, § 12. As a result, Ms. Miller and other aggrieved employees are owed an additional hour of wages at their regular rate of compensation for each workday that they were not authorized and permitted to take all legally required rest periods. *See* Labor Code § 226.7 ("If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest period is not provided."); Wage Order 10, § 12.

Failure to Indemnify all Necessary Business Expenditures

As alleged above, Mountain High has failed, and continues to fail, to reimburse and/or indemnify Ms. Miller and other aggrieved employees for all necessary business

expenses, including but not limited to the purchase of Mount High branded jackets the and use of their personal cellular phones and/or computers for work purposes, and failing to pay reimbursements to Ms. Miller and other aggrieved employees. Mountain High's policies/practices of not providing reimbursement for necessary work expenditures violate Labor Code § 2802, which states that "[a]n employer shall indemnify his or her employees for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or his or her obedience to the directions of the employer."

Wage Statement Violations

Mountain High was required to furnish Ms. Miller and other aggrieved employees with accurate and itemized wage statements that included, among other requirements, all hours worked, all hours worked at each hourly rate, and all gross and net wages earned. *See* Labor Code § 226(a). As a result of Mountain High's failure to pay all required wages, including minimum wages, overtime wages, and meal and rest period premium wages, and failure to record all hours worked, Mountain High maintained inaccurate payroll records and issued inaccurate wage statements to Ms. Miller and other aggrieved employees in violation of Labor Code § 226. Mountain High's failure to comply with its wage statement obligations was knowing and intentional, and Ms. Miller and other aggrieved employees have suffered injury as a result.

Waiting Time Penalties

Labor Code §§ 201 and 202 require that employees receive all of their final wages at the time of their separation of employment. Mountain High failed to timely pay Ms. Miller and other aggrieved employees all of their final wages at the time of separation, which included all earned minimum wages, overtime wages, and meal and rest period premium wages. Pursuant to Labor Code § 203, Mountain High's failure to pay all final wages due to Ms. Miller and other aggrieved employees was willful and, consequently, entitles Ms. Miller and other aggrieved employees to waiting time penalties equal to one day of wages at their standard hourly rate for each day Mountain High failed to pay their final wages after their separation, up to a maximum of thirty days.

As an "aggrieved employee," Ms. Miller will initiate a civil action on behalf of herself and other aggrieved employees to recover civil penalties resulting from the wage and hour violations alleged herein. Based on Ms. Miller's own investigation, and on information and belief, Mountain High committed and continues to commit the following Labor Code violations:

- a. Mountain High has violated Labor Code §§ 204, 510, 558, 1194, and 1198 by failing to pay Ms. Miller and other aggrieved employees all overtime and/or double-time compensation earned;

- b. Mountain High has violated Labor Code §§ 558, 1182.12, 1194, 1194.2, 1197, and 1198 by failing to pay Ms. Miller and other aggrieved employees at least the statutory minimum wage for all hours worked;
- c. Mountain High has violated Labor Code §§ 226.7, 516, 558, and 1198 by failing to authorize and permit Ms. Miller and other aggrieved employees to take all of their statutorily-mandated, duty-free rest periods and failing to pay rest period premiums to Ms. Miller and other aggrieved employees at these employees' respective regular rates of compensation for rest period violations;
- d. Mountain High has violated Labor Code § 226 by failing to furnish Ms. Miller and other aggrieved employees with accurate and complete itemized wage statements;
- e. Mountain High has violated Labor Code §§ 201-203 by failing to timely pay all final wages due to Ms. Miller and other aggrieved former employees upon their separation of employment;
- f. Mountain High has violated Labor Code §§ 1198 and 2802 by failing to reimburse and/or indemnify Ms. Miller and other aggrieved employees for all required work-related expenses incurred;
- g. Mountain High violated Labor Code § 204 by failing to pay Ms. Miller and other aggrieved employees all wages earned at least twice during each calendar month; and
- h. Mountain High violated Labor Code § 1174 by failing to maintain accurate records on behalf of Ms. Miller and other aggrieved employees.

Pursuant to Labor Code Section § 2699.3, please notify my office and Mountain High if the LWDA intends to investigate these alleged violations of the Labor Code. Please contact me should you require additional information.

Very truly yours,
HAINES LAW GROUP, APC



Paul K. Haines

cc: Mountain High Reunited, LLC. (via certified mail)