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behalf of himself and all others similarly situated and aggrieved
8

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF CONTRA COSTA**
11

12 JOEL GALVAN MONTES, on behalf of
13 himself and all others similarly situated
and aggrieved,

14 Plaintiff,

15 v.

16 DEVIL MOUNTAIN WHOLESALE
NURSERY, INC., a converted California
17 corporation; DEVIL MOUNTAIN
WHOLESALE NURSERY, LLC, a
18 California limited liability company; and
DOES 1 through 100, inclusive,
19

20 Defendants.
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CASE NO.: MSC20-02647

[Assigned to the Hon. Edward Weil in Dept. 39]

CLASS ACTION

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

1. FAILURE TO PAY OVERTIME WAGES;
2. FAILURE TO PAY MINIMUM WAGES;
3. FAILURE TO PROVIDE MEAL PERIODS;
4. FAILURE TO PROVIDE REST PERIODS;
5. WAITING TIME PENALTIES;
6. WAGE STATEMENT VIOLATIONS;
7. FAILURE TO TIMELY PAY WAGES;
8. FAILURE TO INDEMNIFY;
9. UNFAIR COMPETITION;
10. CIVIL PENALTIES UNDER LABOR CODE § 210;
11. CIVIL PENALTIES UNDER LABOR CODE § 226.3;
12. VIOLATION OF LABOR CODE § 558;
13. VIOLATION OF LABOR CODE § 1174.5;
14. VIOLATION OF LABOR CODE § 1197.1; and
15. CIVIL PENALTIES UNDER LABOR CODE § 2699

DEMAND FOR JURY TRIAL

[Amount in Controversy Exceeds \$25,000.00]

FILED
MAR - 4 2021

K. HIRKHOFFER OF THE CLERK
SUPERIOR COURT OF CALIFORNIA
COUNTY OF CONTRA COSTA

By _____

COMES NOW plaintiff JOEL GALVAN MONTES ("Plaintiff"), on behalf of Plaintiff and all others similarly situated and aggrieved, and alleges as follows:

GENERAL ALLEGATIONS

INTRODUCTION

1. This is a Class Action, pursuant to Code of Civil Procedure section 382, against DEVIL MOUNTAIN WHOLESALE NURSERY, INC. and any of its respective subsidiaries or affiliated companies within the State of California ("DEVIL MOUNTAIN, INC."), DEVIL MOUNTAIN WHOLESALE NURSERY, LLC and any of its respective subsidiaries or affiliated companies within the State of California ("DEVIL MOUNTAIN, LLC" and, with DEVIL MOUNTAIN, INC. and DOES 1 through 100, as further defined below, "Defendants"), on behalf of Plaintiff and all other current and former non-exempt California employees employed by or formerly employed by Defendants ("Class Members").

2. This is also a Representative Action, pursuant to the Labor Code Private Attorneys General Act of 2004, codified at Labor Code section 2698, *et seq.* ("PAGA"), against DEVIL MOUNTAIN, INC., as a proxy of the Labor and Workforce Development Agency of the State of California ("LWDA"), on behalf of Plaintiff and all other current and former non-exempt employees of DEVIL MOUNTAIN, INC. working within the Civil Penalty Period, as further defined herein, and, as it pertains to the alleged claims for failure to pay overtime and minimum wages, to provide meal and rest breaks or compensation in lieu thereof, to provide employees from taking cooldown rest periods in the shade, to provide employees the opportunity to inspect employment records, pay timely wages during employment and at the time of employment separation, pay time off and vacation time owed at time of employment separation, provide uniform deposits and interest thereon, comply with Labor Code section 2810.5, comply with Labor Code section 203, comply with Labor Code section 226, comply with Labor Code section 246, *et seq.* and comply Labor Code section 2802, restraints on competition, whistleblowing and freedom of speech on behalf of all employees of Defendants working within the Civil Penalty Period (collectively, "Aggrieved Employees").

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PARTIES

A. Plaintiff

3. Plaintiff is a resident of the State of California. At all relevant times herein, Plaintiff is informed and believes, and based thereon alleges that Defendants employed Plaintiff as a non-exempt employee, with duties that included, but were not limited to, driving, loading and unloading of plants for delivery, general cleaning and maintenance of the nursery, and driving tractors to move merchandise. Plaintiff is informed and believes that Plaintiff worked for Defendants from approximately February of 2010 through approximately March of 2020.

B. Defendants

4. Plaintiff is informed and believes and based thereon alleges that defendant DEVIL MOUNTAIN, INC. at all times relevant hereto was a corporation organized and existing under and by virtue of the laws of the State of California and doing business in the County of Contra Costa, State of California.

5. Plaintiff is informed and believes and based thereon alleges that defendant DEVIL MOUNTAIN, LLC is, and at all times relevant hereto was, a limited liability company organized and existing under and by virtue of the laws of the State of California and doing business in the County of Contra Costa, State of California.

6. The true names and capacities, whether individual, corporate, associate, or otherwise, of defendants sued herein as DOES 1 through 100, inclusive, are currently unknown to Plaintiff, who therefore sues defendants by such fictitious names under Code of Civil Procedure section 474. Plaintiff is informed and believes and based thereon alleges that each of the defendants designated herein as DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of the defendants designated hereinafter as DOES when such identities become known. Plaintiff is informed and believes, and based thereon alleges, that each defendant acted in all respects pertinent to this action, as the agent of the other defendant(s), carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each defendant are legally attributable to the other defendants. Whenever, heretofore or hereinafter, reference is made to "Defendants," it shall

1 include DEVIL MOUNTAIN, INC., DEVIL MOUNTAIN, LLC, and any of their parent,
2 subsidiary, or affiliated companies within the State of California, as well as DOES 1 through 100
3 identified herein.

4 **JOINT LIABILITY ALLEGATIONS**

5 7. Plaintiff is informed and believes and based thereon alleges that all the times
6 mentioned herein, each of the Defendants was the agent, principal, employee, employer,
7 representative, joint venture or co-conspirator of each of the other defendants, either actually or
8 ostensibly, and in doing the things alleged herein acted within the course and scope of such agency,
9 employment, joint venture, and conspiracy.

10 8. All of the acts and conduct described herein of each and every corporate defendant
11 was duly authorized, ordered, and directed by the respective and collective defendant corporate
12 employers, and the officers and management-level employees of said corporate employers. In
13 addition thereto, said corporate employers participated in the aforementioned acts and conduct of
14 their said employees, agents, and representatives, and each of them; and upon completion of the
15 aforesaid acts and conduct of said corporate employees, agents, and representatives, the defendant
16 corporation respectively and collectively ratified, accepted the benefits of, condoned, lauded,
17 acquiesced, authorized, and otherwise approved of each and all of the said acts and conduct of the
18 aforementioned corporate employees, agents and representatives.

19 9. As a result of the aforementioned facts, Plaintiff is informed and believes, and based
20 thereon alleges that Defendants, and each of them, are joint employers.

21 **JURISDICTION**

22 10. Jurisdiction exists in the Superior Court of the State of California pursuant to Code
23 of Civil Procedure section 410.10.

24 11. Venue is proper in Contra Costa County, California pursuant to Code of Civil
25 Procedure sections 392, *et seq.*, because, among other things, Contra Costa County is where the
26 causes of action complained of herein arose; the county in which the employment relationship
27 began; the county in which performance of the employment contract, or part of it, between Plaintiff
28 and Defendants was due to be performed; the county in which the employment contract, or part of

1 it, between Plaintiff and Defendants was actually performed; and the county in which Defendants,
2 or some of them, reside. Moreover, the unlawful acts alleged herein have a direct effect on Plaintiff
3 and Class Members in Contra Costa County, and because Defendants employ numerous Class
4 Members in Costa County.

5 12. Plaintiff is an “aggrieved employee” under PAGA, as Plaintiff was employed by
6 DEVIL MOUNTAIN, INC. during the applicable statutory period and suffered one or more of the
7 Labor Code violations set forth herein. Accordingly, Plaintiff seeks to recover civil penalties, as the
8 term “civil penalty” is defined under *ZB N.A. v. Superior Court* (2019) 8 Cal.5th 175, under PAGA
9 plus reasonable attorneys’ fees and costs, for Plaintiff and all other aggrieved current and former
10 employees of DEVIL MOUNTAIN, INC. during the Civil Penalty Period.

11 13. Specifically, Plaintiff seeks to recover PAGA civil penalties through a representative
12 action permitted by PAGA and the California Supreme Court in, among other authorities, *Arias v.*
13 *Superior Court* (2009) 46 Cal.4th 969. According to the same authorities, class certification of the
14 PAGA allegations described herein is not required.

15 14. During the period beginning one (1) year preceding the provision of notice to the
16 LWDA regarding the herein-described Labor Code violations (the “Civil Penalty Period”), DEVIL
17 MOUNTAIN, INC. violated, *inter alia*, Labor Code sections 98.6, 200, 201, 202, 203, 204, 210,
18 226, 226.3, 226.7, 232, 232.5, 246, *et seq.*, 227.3, 404, 432, 510, 512, 558, 1102.5, 1174, 1174.5,
19 1194, 1197, 1197.1, 1197.5, 1198.5, 2699, 2802, and 2810.5, among others.

20 15. Labor Code section 2699, subdivisions (a) and (g), authorizes aggrieved employees
21 such as Plaintiff, on behalf of Plaintiff and all other aggrieved current and former employees within
22 the statutory period, to bring a civil action to recover civil penalties pursuant to the procedures
23 specified in Labor Code section 2699.3.

24 16. On or around July 24, 2020, Plaintiff provided written notice pursuant to Labor Code
25 section 2699.3 online and by certified mail, with return receipt requested, of DEVIL MOUNTAIN,
26 INC.’s violation of various, including the herein-described, provisions of the Labor Code, to the
27 LWDA, as well as by certified mail, with return receipt requested to DEVIL MOUNTAIN, INC.

28 17. Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), the LWDA did not

1 provide notice of its intention to investigate DEVIL MOUNTAIN INC.'s alleged violations within
2 sixty-five (65) calendar days of the July 24, 2020 postmarked date of the herein-described notice
3 sent by Plaintiff to the LWDA and DEVIL MOUNTAIN, INC.

4 **FACTUAL BACKGROUND**

5 18. For at least four (4) years prior to the filing of this action and continuing to the
6 present, Defendants have, at times, failed to pay overtime wages to Plaintiff and Class Members, or
7 some of them, in violation of California state wage and hour laws as a result of, without limitation,
8 Plaintiff and Class Members working over eight (8) hours per day, forty (40) hours per week, and
9 seven consecutive work days in a work week without being properly compensated for hours worked
10 in excess of (8) hours per day in a work day, forty (40) hours per week in a work week, and/or hours
11 worked on the seventh consecutive work day in a work week by, among other things, failing to
12 accurately track and/or pay for all hours actually worked at the proper overtime rate of pay, and
13 requiring employees: to come early to work and leave work late without being able to clock in for
14 all that time, to complete pre-shift tasks before clocking in and post-shift tasks after clocking out, to
15 clock out for meal periods and continue working, and to don and doff uniforms and/or safety
16 equipment off the clock, to the detriment of Plaintiff and Class Members.

17 19. At all times during the Civil Penalty Period, DEVIL MOUNTAIN, INC. had and has
18 a policy or practice of failing to pay overtime wages to Aggrieved Employees in the State of
19 California in violation of California state wage and hour laws as a result of, without limitation,
20 Aggrieved Employees working over eight (8) hours per day, forty (40) hours per week, and/or seven
21 (7) straight workdays in a workweek without paying them proper overtime wages, as a result of,
22 without limitation, failing to accurately track and/or pay for all minutes actually worked; engaging,
23 suffering, or permitting employees to work off the clock, including, without limitation, by requiring
24 employees: to come early to work and leave late work without being able to clock in for all that
25 time, to suffer under Employer's control due to long lines for clocking in, to complete pre-shift tasks
26 before clocking in and post-shift tasks after clocking out, to clock out for meal periods and continue
27 working, to clock out for rest periods, to don and doff uniforms and/or safety equipment off the
28 clock, to attend company meetings off the clock, to make phone calls or drive off the clock; failing

1 to include all forms of remuneration, including non-discretionary bonuses, incentive pay, meal
2 allowances, and other forms of remuneration into the regular rate of pay for the pay periods where
3 overtime was worked and the additional compensation was earned for the purpose of calculating the
4 overtime rate of pay; detrimental rounding of employee time entries, editing and/or manipulation of
5 time entries to show less hours than actually worked, and for paying straight pay instead of overtime
6 pay to the detriment of Aggrieved Employees.

7 20. For at least four (4) years prior to the filing of this Action and continuing to the
8 present, Defendants have, at times, failed to pay minimum wages to Plaintiff and Class Members,
9 or some of them, in violation of California state wage and hour laws as a result of, among other
10 things, at times, failing to accurately track and/or pay for all hours actually worked at their regular
11 rate of pay that is above the minimum wage; and requiring employees: to come early to work and
12 leave work late without being able to clock in for all that time, to complete pre-shift tasks before
13 clocking in and post-shift tasks after clocking out, to clock out for meal periods and continue
14 working, and to don and doff uniforms and/or safety equipment off the clock, to the detriment of
15 Plaintiff and Class Members.

16 21. At all times during the Civil Penalty Period, DEVIL MOUNTAIN, INC. had and has
17 a policy or practice of failing to compensate Aggrieved Employees with minimum wages for all
18 hours worked or otherwise under DEVIL MOUNTAIN, INC.'s control as a result of, without
19 limitation, failing to accurately track and/or pay for all minutes actually worked; engaging,
20 suffering, or permitting employees to work off the clock, including, without limitation, by requiring
21 employees: to come early to work and leave late work without being able to clock in for all that
22 time, to suffer under DEVIL MOUNTAIN, INC.'s control due to long lines for clocking in, to
23 complete pre-shift tasks before clocking in and post-shift tasks after clocking out, to clock out for
24 meal periods and continue working, to clock out for rest periods, to don and doff uniforms and/or
25 safety equipment off the clock, to attend company meetings off the clock, to make phone calls or
26 drive off the clock; detrimental rounding of employee time entries: editing and/or manipulation of
27 time entries to show less hours than actually worked; failing to pay reporting time pay; paid time
28 off and vacation time owed; and failing to pay split shift premiums. to the detriment of Aggrieved

1 Employees.

2 22. For at least four (4) years prior to the filing of this Action and continuing to the
3 present, Defendants have, at times, failed to provide Plaintiff and Class Members, or some of them,
4 full, timely thirty (30) minute uninterrupted meal period for days on which they worked more than
5 five (5) hours in a work day and a second thirty (30) minute uninterrupted meal period for days on
6 which they worked in excess of ten (10) hours in a work day, and failing to provide compensation
7 for such unprovided meal periods as required by California wage and hour laws.

8 23. At all times during the Civil Penalty Period, DEVIL MOUNTAIN, INC. had and has
9 a policy or practice of compelling its employees to work in excess of five (5) and ten (10) hours per
10 day without being afforded uninterrupted, timely, and complete 30-minute meal periods or
11 compensation in lieu thereof including, without limitation: by interrupting meal periods; not
12 providing timely meal periods; failing to provide first and second meal periods; providing short
13 meal periods; requiring that employees carry cellular telephones or walkie-talkies during meal
14 periods; not permitting employees to leave the premises; otherwise requiring on-duty/on-call meal
15 periods; and auto-deducting meal periods that could not be auto-deducted by law or during which
16 employees worked.

17 24. For at least four (4) years prior to the filing of this action and continuing to the
18 present, Defendants have, at times, failed to authorize and permit Plaintiff and Class Members, or
19 some of them, to take rest periods of at least ten (10) minutes per four (4) hours worked or major
20 fraction thereof and failed to provide compensation for such unprovided rest periods as required by
21 California wage and hour laws.

22 25. At all times during the Civil Penalty Period, DEVIL MOUNTAIN, INC. had and has
23 a policy or practice of compelling Aggrieved Employees to work over four-hour periods (or major
24 fractions thereof) without authorizing and permitting Aggrieved Employees to take uninterrupted,
25 timely, and complete ten-minute rest periods in which the employees are completely relieved of all
26 of their duties, including, without limitation: by failing to provide rest periods all together; requiring
27 that they be bundled together and/or with meal periods; interrupting them; requiring that employees
28 carry cellular telephones or walkie-talkies during rest periods not providing them in a timely fashion;

1 and not permitting employees to leave the premises; by failing to provide employees from taking
2 cooldown rest periods in the shade; and otherwise requiring on-duty/on-call rest periods.

3 26. For at least three (3) years prior to the filing of this action and continuing to the
4 present, Defendants have, at times, failed to pay Plaintiff, Aggrieved Employees, and Class
5 Members, or some of them, the full amount of their wages owed to them upon termination and/or
6 resignation as required by Labor Code sections 201 and 202, including for, without limitation,
7 failing to pay overtime wages, minimum wages, and premium wages.

8 27. At all relevant times herein, Defendants had and have a policy or practice of failing
9 to pay Plaintiff and Aggrieved Employees their paid time off and vacation time owed upon
10 separation of employment as wages at their final rate of pay in violation of Labor Code section 227.3
11 and applicable Wage Orders.

12 28. For at least one (1) year prior to the filing of this Action and continuing to the present,
13 Defendants have, at times, failed to furnish Plaintiff, Aggrieved Employees and Class Members, or
14 some of them, with itemized wage statements that accurately reflect gross wages earned; total hours
15 worked; net wages earned; all applicable hourly rates in effect during the pay period and the
16 corresponding number of hours worked at each hourly rate; and other such information as required
17 by Labor Code section 226, subdivision (a). As a result thereof, Defendants have further failed to
18 furnish employees with an accurate calculation of gross and net wages earned, as well as gross and
19 net wages paid.

20 29. For at least one (1) year prior to the filing of this action and continuing to the present,
21 Defendants have, at times, failed to pay Plaintiff, Aggrieved Employees, and Class Members, or
22 some of them, the full amount of their wages for labor performed in a timely fashion as required
23 under Labor Code section 204.

24 30. At all times during the Civil Penalty Period, DEVIL MOUNTAIN INC. had and has
25 a policy or practice of failing to comply with Labor Code section 226, subdivision (a) by
26 intentionally failing to furnish Plaintiff and other Aggrieved Employees with documents signed to
27 obtain or hold employment under Labor Code section 432, personnel records under Labor Code
28 section 1198.5, and time records under Labor Code section 1174, making it difficult for Plaintiff

1 and other Aggrieved Employees to calculate their unpaid wages and/or premium payments, to the
2 detriment of Plaintiffs and other Aggrieved Employees

3 31. For at least three (3) years prior to the filing of this action and continuing to the
4 present, Defendants have, at times, failed to indemnify Plaintiff and Class Members, or some of
5 them, for the costs incurred in separately laundering mandatory work uniforms: and purchasing tools
6 and safety equipment, including, without limitation, scissors, gloves, and rain suits, necessary to
7 perform work duties.

8 32. At all times during the Civil Penalty Period, DEVIL MOUNTAIN INC. has and had
9 a policy or practice of failing and refusing, and continue to fail and refuse, to reimburse Aggrieved
10 Employees with their costs incurred for driving personal vehicles (*i.e.*, mileage and gas), purchasing
11 uniforms, providing uniform and other deposits, separately laundering mandatory uniforms, for the
12 purchase of tools and safety equipment, including, without limitation, scissors, hats, and gloves, and
13 for the purchase and maintenance of cellular phones and cellular phone plans, in direct consequence
14 of the discharge of their duties, or of their obedience to the directions of DEVIL MOUNTAIN, INC.,
15 as required by Labor Code section 2802.

16 33. At all times during the Civil Penalty Period, DEVIL MOUNTAIN, INC. has and
17 had a policy or practice of failing to comply with the notice requirements of Labor Code section
18 2810.5 (*i.e.*, the Wage Theft Protection Act of 2011) by, among other things, failing to provide
19 Plaintiff and other Aggrieved Employees with the rates of pay and overtime rates of pay applicable
20 to their employment; allowances claimed as part of the minimum wage; the regular payday
21 designated by DEVIL MOUNTAIN, INC.; the name, address, and telephone number of the workers'
22 compensation insurance carrier; information regarding paid sick leave; and other pertinent
23 information required to be disclosed by DEVIL MOUNTAIN, INC. under Labor Code section
24 2810.5.

25 34. At all times during the Civil Penalty Period, DEVIL MOUNTAIN, INC. failed to
26 provide Plaintiff and other Aggrieved Employees with the amount of paid sick leave required to be
27 provided pursuant to California law (including, without limitation Labor Code section 246, *et seq.*),
28 and also did not permit its use upon request as contemplated under California laws, to the detriment

1 of Plaintiff and all other Aggrieved Employees.

2 35. At all times during the Civil Penalty Period, DEVIL MOUNTAIN, INC. had and has
3 a policy or practice of failing to reimburse deposits made by Aggrieved Employees, including
4 uniform deposits, together with all interest owed at the separation of employment in violation of
5 Labor Code section 404.

6 36. Defendants had and have a policy or practice of preventing Plaintiff and/or other
7 Aggrieved Employees from engaging in lawful conduct during non-work hours, thus violating state
8 statutes entitling employees to disclose wages, working conditions, and illegal conduct, including,
9 without limitation, Labor Code sections 96, subdivision (k), 98.6, 232, 232.5, and 1197.5,
10 subdivision (k). Plaintiff is informed and believes that this lawful conduct includes the exercise of
11 Plaintiff's and/or other Aggrieved Employee's constitutional rights of freedom of speech and
12 economic liberty.

13 37. Plaintiff, on Plaintiff's own behalf and on behalf of Class Members and other
14 Aggrieved Employees, brings this action pursuant to, including but not limited to, Labor Code
15 sections 98.6, 200, 201, 202, 203, 204, 210, 226, 226.3, 226.7, 232, 232.5, 246, *et seq.*, 227.3, 404,
16 432, 510, 512, 558, 1102.5, 1174, 1174.5, 1194, 1197, 1197.1, 1197.5, 1198.5, 2699, 2802, and
17 2810.5, and applicable regulations under the California Code of Regulations, seeking overtime
18 wages, minimum wages, payment of premium wages for missed meal and rest periods, failure to
19 pay timely wages, waiting time penalties, wage statement penalties, failure to indemnify work-
20 related expenses, civil penalties, other such provisions of California law, and reasonable attorneys'
21 fees and costs.

22 38. Plaintiff, on Plaintiff's own behalf and on behalf of Class Members, pursuant to
23 Business and Professions Code sections 17200 through 17208, also seeks (an) injunction(s)
24 prohibiting Defendants from further violating the Labor Code and requiring the establishment of
25 appropriate and effective means to prevent further violations, as well as all monies owed but
26 withheld and retained by Defendants to which Plaintiff and Class Members are entitled, as well as
27 restitution of amounts owed.

28 / / /

1 **CLASS ACTION ALLEGATIONS**

2 39. Plaintiff brings this action on behalf of Plaintiff and Class Members as a class action
3 pursuant to Code of Civil Procedure section 382. Plaintiff seeks to represent a class of all current
4 and former non-exempt employees of Defendants within the State of California at any time
5 commencing four (4) years preceding the filing of Plaintiff's complaint up until the time that notice
6 of the class action is provided to the class (collectively referred to as "Class Members").

7 40. Plaintiff reserves the right under California Rule of Court rule 3.765, subdivision (b)
8 to amend or modify the class description with greater specificity, further divide the defined class
9 into subclasses, and to further specify or limit the issues for which certification is sought.

10 41. This action has been brought and may properly be maintained as a class action under
11 the provisions of Code of Civil Procedure section 382 because there is a well-defined community
12 of interest in the litigation and the proposed Class is easily ascertainable.

13 **A. Numerosity**

14 42. The potential Class Members as defined are so numerous that joinder of all the
15 members of the Class is impracticable. While the precise number of Class Members has not been
16 determined yet, Plaintiff is informed and believes that there are over seventy-five (75) Class
17 Members employed by Defendants within the State of California.

18 43. Accounting for employee turnover during the relevant periods necessarily increases
19 this number. Plaintiff alleges Defendants' employment records would provide information as to the
20 number and location of all Class Members. Joinder of all members of the proposed Class is not
21 practicable.

22 **B. Commonality**

23 44. There are questions of law and fact common to Class Members. These common
24 questions include, but are not limited to:

25 A. Did Defendants violate Labor Code sections 510 and 1194 by failing to pay all hours
26 worked at a proper overtime rate of pay?

27 B. Did Defendants violate Labor Code sections 510, 1194 and 1197 by failing to pay
28 for all other time worked at the employee's regular rate of pay and a rate of pay that

- 1 is greater than the applicable minimum wage?
- 2 C. Did Defendants violate Labor Code section 512 by not authorizing or permitting
- 3 Class Members to take compliant meal periods?
- 4 D. Did Defendants violate Labor Code section 226.7 by not providing Class Members
- 5 with additional wages for missed or interrupted meal periods?
- 6 E. Did Defendants violate applicable Wage Orders by not authorizing or permitting
- 7 Class Members to take compliant rest periods?
- 8 F. Did Defendants violate Labor Code section 226.7 by not providing Class Members
- 9 with additional wages for missed rest periods?
- 10 G. Did Defendants violate Labor Code sections 201 and 202 by failing to pay Class
- 11 Members upon termination or resignation all wages earned?
- 12 H. Are Defendants liable to Class Members for waiting time penalties under Labor Code
- 13 section 203?
- 14 I. Did Defendants violate Labor Code section 226, subdivision (a) by not furnishing
- 15 Class Members with accurate wage statements?
- 16 J. Did Defendants fail to pay Class Members in a timely fashion as required under
- 17 Labor Code section 204?
- 18 K. Did Defendants fail to indemnify Class Members for all necessary expenditures or
- 19 losses incurred in direct consequence of the discharge of their duties or by obedience
- 20 to the directions of Defendants as required under Labor Code section 2802?
- 21 L. Did Defendants violate the Unfair Competition Law, Business and Professions Code
- 22 section 17200, *et seq.*, by their unlawful practices as alleged herein?
- 23 M. Are Class Members entitled to restitution of wages under Business and Professions
- 24 Code section 17203?
- 25 N. Are Class Members entitled to costs and attorneys' fees?
- 26 O. Are Class Members entitled to interest?

27 C. **Typicality**

- 28 45. The claims of Plaintiff herein alleged are typical of those claims which could be

1 alleged by any Class Members, and the relief sought is typical of the relief which would be sought
2 by each Class Member in separate actions. Plaintiff and Class Members sustained injuries and
3 damages arising out of and caused by Defendants' common course of conduct in violation of laws
4 and regulations that have the force and effect of law and statutes as alleged herein.

5 **D. Adequacy of Representation**

6 46. Plaintiff will fairly and adequately represent and protect the interest of Class
7 Members. Counsel who represents Plaintiff is competent and experienced in litigating wage and
8 hour class actions.

9 **E. Superiority of Class Action**

10 47. A class action is superior to other available means for the fair and efficient
11 adjudication of this controversy. Individual joinder of all Class Members is not practicable, and
12 questions of law and fact common to Class Members predominate over any questions affecting only
13 individual Class Members. Class Members, as further described therein, have been damaged and
14 are entitled to recovery by reason of Defendants' policies and/or practices that have resulted in the
15 violation of the Labor Code at times, as set out herein.

16 48. Class action treatment will allow Class Members to litigate their claims in a manner
17 that is most efficient and economical for the parties and the judicial system. Plaintiff is unaware of
18 any difficulties that are likely to be encountered in the management of this action that would
19 preclude its maintenance as a class action.

20 **FIRST CAUSE OF ACTION**

21 **(Failure to Pay Overtime Wages – Against All Defendants)**

22 49. Plaintiff realleges and incorporates by reference all of the allegations contained in
23 the preceding paragraphs as though fully set forth hereat.

24 50. At all relevant times, Plaintiff and Class Members were employees or former
25 employees of Defendants covered by Labor Code sections 510, 1194 and 1199. as well as applicable
26 Wage Orders.

27 51. At all times relevant to this Complaint, Labor Code section 510 was in effect and
28 provided: "(a) Eight hours of labor constitutes a day's work. Any work in excess of eight hours in

1 one workday and any work in excess of forty hours in any one workweek . . . shall be compensated
2 at the rate of no less than one and one-half times the regular rate of pay for an employee.”

3 52. At all times relevant to this Complaint, Labor Code section 510 further provided that
4 “[a]ny work in excess of 12 hours in one day shall be compensated at the rate of no less than twice
5 the regular rate of pay for an employee. In addition, any work in excess of eight hours on any
6 seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of
7 pay.”

8 53. Four (4) years prior to the filing of the Complaint in this Action through the present,
9 Plaintiff and Class Members, at times, worked for Defendants during shifts that consisted of more
10 than eight (8) hours in a workday and/or more than forty hours in a workweek, and/or seven (7)
11 consecutive workdays in a workweek, without being paid overtime wages for all hours worked as a
12 result of, including but not limited to, Defendants failing to accurately track and/or pay for all hours
13 actually worked at the proper overtime rate of pay, and requiring employees: to come early to work
14 and leave work late without being able to clock in for all that time, to complete pre-shift tasks before
15 clocking in and post-shift tasks after clocking out, to clock out for meal periods and continue
16 working, and to don and doff uniforms and/or safety equipment off the clock, to the detriment of
17 Plaintiff and Class Members.

18 54. Accordingly, by requiring Plaintiff and Class Members to, at times, work greater
19 than eight (8) hours per workday, forty (40) hours per workweek, and/or seven (7) straight workdays
20 without properly compensating overtime wages at the proper overtime rate of pay, Defendants, on
21 occasion, willfully violated the provisions of the Labor Code, among others, sections 510, 1194, and
22 applicable IWC Wage Orders, and California law.

23 55. As a result of the unlawful acts of Defendants, Plaintiff and Class Members have
24 been deprived of overtime wages in amounts to be determined at trial, and are entitled to recovery,
25 plus interest and penalties thereon, attorneys’ fees and costs, pursuant to Labor Code section 1194
26 and 1199, Code of Civil Procedure section 1021.5 and 1032, and Civil Code section 3287.

27 / / /

28 / / /

1 **SECOND CAUSE OF ACTION**

2 **(Failure to Pay Minimum Wages – Against All Defendants)**

3 56. Plaintiff realleges and incorporates by reference all of the allegations contained in
4 the preceding paragraphs as though fully set forth hereat.

5 57. At all relevant times, Plaintiff and Class Members were employees or former
6 employees of Defendants covered by Labor Code sections 1197, 1199 and applicable Wage Orders.

7 58. Pursuant to Labor Code section 1197 and applicable Wage Orders, Plaintiff and
8 Class Members were entitled to receive minimum wages for all hours worked or otherwise under
9 Defendants' control.

10 59. For four (4) years prior to the filing of the Complaint in this Action through the
11 present, Defendants failed, at times, accurately track and/or pay for all hours actually worked at their
12 regular rate of pay that is above the minimum wage; and required employees: to come early to work
13 and leave work late without being able to clock in for all that time, to complete pre-shift tasks before
14 clocking in and post-shift tasks after clocking out, to clock out for meal periods and continue
15 working, and to don and doff uniforms and/or safety equipment off the clock, to the detriment of
16 Plaintiff and Class Members.

17 60. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have
18 suffered damages in an amount, subject to proof, to the extent they were not paid minimum wages
19 for all hours worked or otherwise due.

20 61. Pursuant to Labor Code sections 218.6, 1194, 1194.2, Code of Civil Procedure
21 sections 1021.5 and 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled to
22 recover the full amount of unpaid minimum wages, interest and penalties thereon, liquidated
23 damages, reasonable attorneys' fees and costs of suit.

24 **THIRD CAUSE OF ACTION**

25 **(Failure to Provide Meal Periods – Against All Defendants)**

26 62. Plaintiff realleges and incorporates by reference all of the allegations contained in
27 the preceding paragraphs as though fully set forth hereat.

28 63. At all relevant times, Plaintiff and Class Members were employees or former

1 employees of Defendants covered by Labor Code section 512 and applicable Wage Orders.

2 64. Pursuant to Labor Code section 512 and applicable Wage Orders, no employer shall
3 employ an employee for a work period of more than five (5) hours without a timely meal break of
4 not less than thirty (30) minutes in which the employee is relieved of all of his or her duties.
5 Furthermore, no employer shall employ an employee for a work period of more than ten (10) hours
6 per day without providing the employee with a second timely meal period of not less than thirty (30)
7 minutes in which the employee is relieved of all of his or her duties.

8 65. Pursuant to Labor Code section 226.7, if an employer fails to provide an employee
9 with a meal period as provided in the applicable Wage Order of the Industrial Welfare Commission,
10 the employer shall pay the employee one (1) additional hour of pay at the employee's regular rate
11 of compensation for each workday that the meal period is not provided.

12 66. For four (4) years prior to the filing of the Complaint in this Action through the
13 present, Plaintiff and Class Members were, at times, not provided complete, timely 30-minute, duty-
14 free uninterrupted meal periods every five hours of work without waiving the right to take them, as
15 permitted. Moreover, at times, Defendants failed to provide one (1) additional hour of pay at the
16 Class Members' regular rate of compensation on the occasions that Class Members were not
17 provided compliant meal periods.

18 67. By their failure to provide Plaintiff and Class Members compliant meal periods as
19 contemplated by Labor Code section 512, among other California authorities, and failing, at times,
20 to provide compensation for such unprovided meal periods, as alleged above. Defendants willfully
21 violated the provisions of Labor Code section 512 and applicable Wage Orders.

22 68. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have
23 suffered damages in an amount, subject to proof, to the extent they were not paid additional pay
24 owed for missed, untimely, interrupted, incomplete and/or on-duty meal periods.

25 69. Plaintiff and Class Members are entitled to recover the full amount of their unpaid
26 additional pay for unprovided compliant meal periods, in amounts to be determined at trial, plus
27 interest and penalties thereon, attorneys' fees, and costs, under Labor Code sections 226 and 226.7,
28 Code of Civil Procedure sections 1021.5 and 1032, and Civil Code section 3287.

1 **FOURTH CAUSE OF ACTION**

2 **(Failure to Provide Rest Periods – Against All Defendants)**

3 70. Plaintiff realleges and incorporates by reference all of the allegations contained in
4 the preceding paragraphs as though fully set forth hereat.

5 71. At all relevant times, Plaintiff and Class Members were employees or former
6 employees of Defendants covered by applicable Wage Orders.

7 72. California law and applicable Wage Orders require that employers “authorize and
8 permit” employees to take ten (10) minute rest periods in about the middle of each four (4) hour
9 work period “or major fraction thereof.” Accordingly, employees who work shifts of three and-a-
10 half (3 ½) to six (6) hours must be provided ten (10) minutes of paid rest period, employees who
11 work shifts of more than six (6) and up to ten (10) hours must be provided with twenty (20) minutes
12 of paid rest period, and employees who work shifts of more than ten (10) hours must be provided
13 thirty (30) minutes of paid rest period.

14 73. Pursuant to Labor Code section 226.7, if an employer fails to provide an employee
15 with a meal period or rest period as provided in the applicable Wage Order of the Industrial Welfare
16 Commission, the employer shall pay the employee one (1) additional hour of pay at the employee’s
17 regular rate of compensation for each work day that the rest period is not provided.

18 74. For four (4) years prior to the filing of the Complaint in this Action through the
19 present, Plaintiff and Class Members were, at times, not authorized or permitted to take complete,
20 timely 30-minute, duty-free uninterrupted rest periods every four (4) hours of work or major fraction
21 thereof. Moreover, at times, Defendants failed to provide one (1) additional hour of pay at the Class
22 Members’ regular rate of compensation on the occasions that Class Members were not authorized
23 or permitted to take compliant rest periods.

24 75. By their failure, at times, to authorize and permit Plaintiff and Class Members to take
25 rest periods contemplated by California law, and one (1) additional hour of pay at the employee’s
26 regular rate of compensation for such unprovided rest periods, as alleged above, Defendants
27 willfully violated the provisions of Labor Code section 226.7 and applicable Wage Orders.

28 76. As a result of Defendants’ unlawful conduct, Plaintiff and Class Members have

1 suffered damages in an amount, subject to proof, to the extent they were not paid additional pay
2 owed for rest periods that they were not authorized or permitted to take.

3 77. Plaintiff and Class Members are entitled to recover the full amount of their unpaid
4 additional pay for unprovided compliant meal periods, in amounts to be determined at trial, plus
5 interest and penalties thereon, attorneys' fees, and costs, under Labor Code sections 226 and 226.7,
6 Code of Civil Procedure sections 1021.5 and 1032, and Civil Code section 3287.

7 **FIFTH CAUSE OF ACTION**

8 **(Failure to Pay All Wages Due Upon Termination – Against All Defendants)**

9 78. Plaintiff realleges and incorporates by reference all of the allegations contained in
10 the preceding paragraphs as though fully set forth hereat.

11 79. At all relevant times, Plaintiff and Class Members were employees or former
12 employees of Defendants covered by Labor Code sections 201, 202 and 203, as well as applicable
13 Wage Orders.

14 80. Pursuant to Labor Code sections 201 and 202, Plaintiff and Class Members were
15 entitled upon termination to timely payment of all wages earned and unpaid prior to termination.
16 Discharged Class Members were entitled to payment of all wages earned and unpaid prior to
17 discharge immediately upon termination. Class Members who resigned were entitled to payment
18 of all wages earned and unpaid prior to resignation within 72 hours after giving notice of resignation
19 or, if they gave 72 hours previous notice, they were entitled to payment of all wages earned and
20 unpaid at the time of resignation.

21 81. Plaintiff is informed and believes, and based thereon alleges, that in the three (3)
22 years before the filing of the Complaint in this Action through the present, Defendants, due to the
23 failure, at times, to provide overtime wages, minimum wages, and premium wages mentioned
24 above, failed to pay Plaintiff and Class Members all wages earned prior to resignation or termination
25 in accordance with Labor Code sections 201 or 202.

26 82. Plaintiff is informed and believes Defendants' failure, at times, to pay Plaintiff and
27 Class Members all wages earned prior to termination or resignation in accordance with Labor Code
28 sections 201 and 202 was willful. Defendants had the ability to pay all wages earned by Plaintiff

1 and Class Members at the time of termination in accordance with Labor Code sections 201 and 202,
2 but intentionally adopted policies or practices incompatible with the requirements of Labor Code
3 sections 201 and 202 resulting in the failure, at times, to pay all wages earned prior to termination
4 or resignation..

5 83. Pursuant to Labor Code section 203, Plaintiff and Class Members are entitled to
6 waiting time penalties from the date their earned and unpaid wages were due. upon termination or
7 resignation, until paid, up to a maximum of thirty (30) days.

8 84. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have
9 suffered damages in an amount subject to proof, to the extent they were not paid for all wages earned
10 prior to termination or resignation.

11 85. Pursuant to Labor Code section 203 and 218.6, Code of Civil Procedure sections
12 1021.5 and 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled to recover
13 waiting time penalties, interest, and their costs of suit, as well.

14 **SIXTH CAUSE OF ACTION**

15 **(Failure to Provide Accurate Wage Statements – Against All Defendants)**

16 86. Plaintiff realleges and incorporates by reference all of the allegations contained in
17 the preceding paragraphs as though fully set forth hereat.

18 87. At all relevant times, Plaintiff and Class Members were employees or former
19 employees of Defendants covered by Labor Code section 226, as well as applicable Wage Orders.

20 88. Pursuant to Labor Code section 226, subdivision (a). Plaintiff and Class Members
21 were entitled to receive, semi-monthly or at the time of each payment of wages. an accurate itemized
22 statement that accurately reflects, among other things, gross wages earned; total hours worked; net
23 wages earned; and all applicable hourly rates in effect during the pay period and the corresponding
24 number of hours worked at each hourly rate, among other things.

25 89. Plaintiff is informed and believes, and based thereon alleges, that in the one (1) year
26 before the filing of the Complaint in this Action through the present. Defendants failed to comply
27 with Labor Code section 226, subdivision (a) by adopting policies and practices that resulted in their
28 failure, at times, to furnish Plaintiff and Class Members with accurate itemized statements that

1 accurately reflect, among other things, gross wages earned; total hours worked; net wages earned;
2 all applicable hourly rates in effect during the pay period and the corresponding number of hours
3 worked at each hourly rate, among other things.

4 90. Defendants' failure to, at times, provide Plaintiff and Class Members with accurate
5 wage statements was knowing, intentional, and willful. Defendants had the ability to provide
6 Plaintiff and the other Class Members with accurate wage statements, but, at times, willfully
7 provided wage statements that Defendants knew were not accurate.

8 91. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have
9 suffered injury. The absence of accurate information on Class Members' wage statements at times
10 has delayed timely challenge to Defendants' unlawful pay practices; requires discovery and
11 mathematical computations to determine the amount of wages owed; causes difficulty and expense
12 in attempting to reconstruct time and pay records; and led to submission of inaccurate information
13 about wages and amounts deducted from wages to state and federal governmental agencies, among
14 other things.

15 92. Pursuant to Labor Code section 226, subdivision (e). Plaintiff and Class Members
16 are entitled to recover \$50 for the initial pay period during the period in which violation of Labor
17 Code section 226 occurred and \$100 for each violation of Labor Code section 226 in a subsequent
18 pay period, not to exceed an aggregate \$4,000.00 per employee.

19 93. Pursuant to Labor Code sections 226, subdivisions (e) and (g), Code of Civil
20 Procedure section 1032, Civil Code section 3287, Plaintiff and Class Members are entitled to
21 recover the full amount of penalties due under Labor Code section 226, subdivision (e), reasonable
22 attorneys' fees, and costs of suit.

23 **SEVENTH CAUSE OF ACTION**

24 **(Failure to Timely Pay Wages During Employment – Against All Defendants)**

25 94. Plaintiff re-alleges each and every allegation set forth in the preceding paragraphs
26 and incorporates each by reference as though fully set forth hereat.

27 95. At all relevant times, Plaintiff and Class Members were employees or former
28 employees of Defendants covered by Labor Code section 204 and applicable Wage Orders.

1 96. Labor Code section 204 provides that "[l]abor performed between the 1st and 15th
2 days, inclusive, of any calendar month shall be paid for between the 16th and 26th day of the month
3 during which the labor was performed, and labor performed between the 16th and the last day,
4 inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following
5 month."

6 97. Labor Code section 210, subdivision (a) states that "[i]n addition to, and entirely
7 independent and apart from, any other penalty provided in this article, every person who fails to pay
8 the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, and
9 1197.5, shall be subject to a civil penalty as follows: (1) For any initial violation, one hundred dollars
10 (\$100) for each failure to pay each employee" and "(2) For each subsequent violation, or any willful
11 or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25
12 percent of the amount unlawfully withheld."

13 98. Plaintiff is informed and believes, and based thereon alleges, that in the one (1) year
14 before the filing of the Complaint in this Action through the present, Defendants employed policies
15 and practices that resulted in, at times, not paying Plaintiff and Class Members in accordance with
16 Labor Code section 204.

17 99. Pursuant to Labor Code section 210, Plaintiff and Class Members are entitled to
18 recover penalties for Defendants' violations of Labor Code section 204, in the amount of one
19 hundred dollars (\$100) for each initial violation per Class Member, and two hundred dollars (\$200)
20 for each subsequent violation in connection with each payment that was made in violation of Labor
21 Code section 204 per Class Member, plus 25 percent of the amount unlawfully withheld.

22 100. Pursuant to Labor Code section 218.6, Code of Civil Procedure sections 1021.5 and
23 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled to recovery of penalties,
24 interest, and their costs of suit, as well.

25 **EIGHTH CAUSE OF ACTION**

26 **(Violation of Labor Code § 2802 – Against All Defendants)**

27 101. Plaintiff realleges and incorporates by reference all of the allegations contained in
28 the preceding paragraphs as though fully set forth hereat.

1 102. At all relevant times, Plaintiff and Class Members were employees or former
2 employees of Defendants covered by Labor Code section 2802 and applicable Wage Orders.

3 103. Labor Code section 2802, subdivision (a) provides that "an employer shall indemnify
4 his or her employee for all necessary expenditures or losses incurred by the employee in direct
5 consequence of the discharge of his or her duties . . ."

6 104. For three (3) years prior to the filing of the Complaint in this Action through the
7 present, Defendants required Plaintiff and Class Members, or some of them, to incur, at times,
8 necessary expenditures or losses in direct consequence of the discharge of their duties or at the
9 obedience to the directions of Defendants that included, without limitation: separately laundering
10 mandatory work uniforms and purchasing tools and safety equipment, including, without limitation,
11 scissors, gloves, and rain suits necessary to perform work duties.

12 105. During that time period, Plaintiff is informed and believes, and based thereon alleges
13 that Defendants failed and refused, and still fail and refuse, at times, to reimburse Plaintiff and Class
14 Members for those losses and/or expenditures.

15 106. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have
16 suffered damages in an amount subject to proof, to the extent they were not reimbursed for the
17 herein-described losses and/or expenditures.

18 107. Pursuant to Labor Code section 2802, Code of Civil Procedure sections 1021.5 and
19 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled to recover
20 reimbursement for their herein-described losses and/or expenditures, reasonable attorneys' fees and
21 costs of suit.

22 **NINTH CAUSE OF ACTION**

23 **(Unfair Competition – Against All Defendants)**

24 108. Plaintiff realleges and incorporates by reference all of the allegations contained in
25 the preceding paragraphs as though fully set forth hereat.

26 109. Plaintiff is informed and believes, and based thereon alleges that the unlawful
27 conduct of Defendants alleged herein constitutes unfair competition within the meaning of Business
28 and Professions Code section 17200. Due to their unlawful business practices in violation of the

1 Labor Code, Defendants have gained a competitive advantage over other comparable companies
2 doing business in the State of California that comply with their obligations to compensate employees
3 in accordance with the Labor Code.

4 110. As a result of Defendants' unfair competition as alleged herein, Plaintiff and Class
5 Members have suffered injury in fact and lost money or property.

6 111. Pursuant to Business and Professions Code section 17203, Plaintiff and Class
7 Members are entitled to (an) injunction(s) prohibiting Defendants from further violating the Labor
8 Code and requiring the establishment of appropriate and effective means to prevent further
9 violations, as well as restitution of all wages and other monies owed to them under the Labor Code,
10 including interest thereon, in which they had a property interest and which Defendants nevertheless
11 failed to pay them and instead withheld and retained for themselves. Restitution of the money owed
12 to Plaintiff and Class Members is necessary to prevent Defendants from becoming unjustly enriched
13 by their failure to comply with the Labor Code.

14 112. Plaintiff and Class Members are entitled to costs of suit under Code of Civil
15 Procedure section 1032 and interest under Civil Code section 3287.

16 **TENTH CAUSE OF ACTION**

17 **(Civil Penalties Under Labor Code § 210 – Against DEVIL MOUNTAIN, INC.)**

18 113. Plaintiff re-alleges each and every allegation set forth in the preceding paragraphs
19 and incorporates each by reference as though fully set forth hereat.

20 114. At all relevant times herein, Labor Code section 204, requires and required that:
21 “[l]abor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for
22 between the 16th and 26th day of the month during which the labor was performed, and labor
23 performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for
24 between the 1st and 10th day of the following month.”

25 115. At all relevant times herein, Labor Code section 210, subdivision (a) states and stated
26 that “[i]n addition to, and entirely independent and apart from, any other penalty provided in this
27 article, every person who fails to pay the wages of each employee as provided in Sections 201.3,
28 204, 204b, 204.1, 205, 205.5, and 1197.5, shall be subject to a civil penalty as follows: (1) For any

1 initial violation, one hundred dollars (\$100) for each failure to pay each employee” and “(2) For
2 each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for
3 each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.”

4 116. At all relevant times herein, DEVIL MOUNTAIN, INC. has had a consistent policy
5 or practice of failing to pay Plaintiff and/or Aggrieved Employees during their employment on a
6 timely basis as per Labor Code section 204. Thus, pursuant to Labor Code section 210, Plaintiff
7 and other Aggrieved Employees are entitled to recover civil penalties for DEVIL MOUNTAIN,
8 INC.’s violations of Labor Code section 204, in the amount of one hundred dollars (\$100) for each
9 Aggrieved Employee for each initial violation per employee, and two hundred dollars (\$200) for
10 each Aggrieved Employee for each subsequent violation in connection with each payment that was
11 made in violation of Labor Code section 204.

12 **ELEVENTH CAUSE OF ACTION**

13 **(Civil Penalties Under Labor Code § 226.3 – Against DEVIL MOUNTAIN, INC.)**

14 117. Plaintiff re-alleges each and every allegation set forth in the preceding paragraphs
15 and incorporates each by reference as though fully set forth hereat.

16 118. DEVIL MOUNTAIN, INC. had and has a policy or practice of failing to comply
17 with Labor Code section 226, subdivision (a) by intentionally failing to furnish Plaintiff and
18 Aggrieved Employees with itemized wage statements that accurately reflect gross wages earned;
19 total hours worked; net wages earned; all applicable hourly rates in effect during the pay period and
20 the corresponding number of hours worked at each hourly rate; and other such information as
21 required by Labor Code section 226, subdivision (a).

22 119. Labor Code section 226.3 states that “[a]ny employer who violates subdivision (a)
23 of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250)
24 per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for
25 each violation in a subsequent citation, for which the employer fails to provide the employee a wage
26 deduction statement or fails to keep the records required in subdivision (a) of Section 226.”

27 120. Labor Code section 226.3 further provides that “[t]he civil penalties provided for in
28 this section are in addition to any other penalty provided by law.”

1 121. Plaintiff is informed and believes, and based thereon alleges, that DEVIL
2 MOUNTAIN, INC. had and has a policy or practice of failing to furnish non-exempt employees,
3 including, without limitation, Plaintiff, with itemized wage statements that accurately reflect gross
4 wages earned; total hours worked; net wages earned; all applicable hourly rates in effect during the
5 pay period and the corresponding number of hours worked at each hourly rate; and other such
6 information as required by Labor Code section 226, subdivision (a)

7 122. Pursuant to Labor Code section 226.3, Plaintiff and other Aggrieved Employees are
8 entitled to recover civil penalties for DEVIL MOUNTAIN, INC.'s violation of Labor Code section
9 226, subdivision (a) in the amount of two hundred fifty dollars (\$250) for each Aggrieved Employee
10 per pay period for the initial violation, and one thousand dollars (\$1,000) for each Aggrieved
11 Employee per pay period for each subsequent violation.

12 **TWELFTH CAUSE OF ACTION**

13 **(Violation of Labor Code § 558 – Against DEVIL MOUNTAIN, INC.)**

14 123. Plaintiff re-alleges each and every allegation set forth in the preceding paragraphs
15 and incorporates each by reference as though fully set forth hereat.

16 124. Pursuant to Labor Code section 558, subdivision (a): "Any employer or other person
17 acting on behalf of an employer who violates, or causes to be violated . . . any provision regulating
18 hours and days of work in any of the Industrial Welfare Commission" shall be subject to a civil
19 penalty as follows:

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

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

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

27 125. Plaintiff is informed and believes, and based thereon allege, that DEVIL
28 MOUNTAIN, INC. violated, or caused to be violated, the Labor Code sections described herein,

1 including causing Plaintiff and other Aggrieved Employees not to: be paid overtime wages and
2 minimum wages; receive meal and rest periods or compensation in lieu thereof; be paid timely
3 wages during their employment and after their employment separation; receive accurate, itemized
4 wage statements; be provided with the opportunity to inspect employment records; be provided with
5 notice as required under Labor Code section 2810.5; be provided with the proper accrual and use of
6 paid sick leave; and/or be paid out all paid time off and/or vacation wages owed at the proper rate
7 of pay.

8 126. As a direct and proximate result of the herein-described Labor Code violations,
9 pursuant to Labor Code section 558, Plaintiff and other Aggrieved Employees are entitled to recover
10 civil penalties for DEVIL MOUNTAIN, INC.'s herein-described Labor Code violations in the
11 amount fifty dollars (\$50) for each Aggrieved Employee per pay period for the initial violation, and
12 one hundred dollars (\$100) for each Aggrieved Employee per pay period for each subsequent
13 violation.

14 **THIRTEENTH CAUSE OF ACTION**

15 **(Violation of Labor Code § 1174.5 – Against DEVIL MOUNTAIN, INC.)**

16 127. Plaintiff re-alleges each and every allegation set forth in the preceding paragraphs
17 and incorporates each by reference as though fully set forth hereat.

18 128. At all times mentioned herein, Labor Code section 1174, subdivision (b) has required
19 every person employing labor in California to “[a]llow any member of the commission or the
20 employees of the Division of Labor Standards Enforcement free access to the place of business or
21 employment of the person to secure any information or make any investigation that they are
22 authorized by this chapter to ascertain or make. The commission may inspect or make excerpts,
23 relating to the employment of employees, from the books, reports, contracts, payrolls, documents,
24 or papers of the person.”

25 129. At all times mentioned herein, Labor Code section 1174, subdivision (c) has required
26 every person employing labor in California to “[k]eep a record showing the names and addresses of
27 all employees employed and the ages of all minors.”

28 130. At all times mentioned herein, Labor Code section 1174, subdivision (d) has required

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

9 131. Pursuant to Labor Code section 1174.5, “[a]ny person employing labor who willfully
10 fails to maintain the records required by subdivision (c) of [Labor Code] Section 1174 or accurate
11 and complete records required by subdivision (d) of [Labor Code] Section 1174, or to allow any
12 member of the commission or employees of the division to inspect records pursuant to subdivision
13 (b) of [Labor Code] Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

14 132. Plaintiff is informed and believes, and based thereon alleges, that DEVIL
15 MOUNTAIN, INC. has willfully failed to maintain the records required by Labor Code subdivision
16 (c), failed to maintain accurate and complete records required by Labor Code subdivision (d), and/or
17 failed to allow inspection of records as required by Labor Code subdivision (b).

18 133. As a direct and proximate result of the herein-described Labor Code violations,
19 pursuant to Labor Code section 1174.5, Plaintiff and other Aggrieved Employees are entitled to
20 recover civil penalties for DEVIL MOUNTAIN, INC.’s herein-described Labor Code violations in
21 the amount of five hundred dollars (\$500) per violation per Aggrieved Employee.

22 **FOURTEENTH CAUSE OF ACTION**

23 **(Violation of Labor Code § 1197.1 – Against DEVIL MOUNTAIN, INC.)**

24 134. Plaintiff re-alleges each and every allegation set forth in the preceding paragraphs
25 and incorporates each by reference as though fully set forth hereat.

26 135. Pursuant to Labor Code section 1197.1, subdivision (a): “Any employer or other
27 person acting either individually or as an officer, agent, or employee of another person, who pays
28 or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or

1 local law, or by an order of the commission shall be subject to a civil penalty, restitution of wages,
2 liquidated damages payable to the employee, and any applicable penalties imposed pursuant to
3 Section 203 as follows:

4 (1) For any initial violation that is intentionally committed, one hundred dollars
5 (\$100) for each underpaid employee for each pay period for which the
6 employee is underpaid. This amount shall be in addition to an amount
7 sufficient to recover underpaid wages, liquidated damages pursuant to Section
8 1194.2, and any applicable penalties imposed pursuant to Section 203.

9 (2) For each subsequent violation for the same specific offense, two hundred fifty
10 dollars (\$250) for each underpaid employee for each pay period for which the
11 employee is underpaid regardless of whether the initial violation is
12 intentionally committed. This amount shall be in addition to an amount
13 sufficient to recover underpaid wages, liquidated damages pursuant to Section
14 1194.2, and any applicable penalties imposed pursuant to Section 203.

15 (3) Wages, liquidated damages, and any applicable penalties imposed pursuant to
16 Section 203, recovered pursuant to this section shall be paid to the affected
17 employee."

18 136. Plaintiff is informed and believes, and based thereon alleges, that DEVIL
19 MOUNTAIN, INC. caused Plaintiff and Aggrieved Employees not to be paid minimum wages as a
20 result of DEVIL MOUNTAIN, INC., without limitation, routinely failing to pay Plaintiff or other
21 Aggrieved Employees' wages for all hours worked or otherwise under DEVIL MOUNTAIN, INC.'s
22 control due to, without limitation, failing to accurately track and/or pay for all minutes actually
23 worked; engaging, suffering, or permitting employees to work off the clock, including, without
24 limitation, by requiring employees: to come early to work and leave late work without being able to
25 clock in for all that time, to suffer under DEVIL MOUNTAIN, INC.'s control due to long lines for
26 clocking in, to complete pre-shift tasks before clocking in and post-shift tasks after clocking out, to
27 clock out for meal periods and continue working, to clock out for rest periods, to don and doff
28 uniforms and/or safety equipment off the clock, to attend company meetings off the clock, to make

1 phone calls or drive off the clock; detrimental rounding of employee time entries; editing and/or
2 manipulation of time entries to show less hours than actually worked; failing to pay reporting time
3 pay; and failing to pay split shift premiums.

4 137. As a direct and proximate result of the herein-described Labor Code violations,
5 pursuant to Labor Code section 1197.1, Plaintiff and other Aggrieved Employees are entitled to
6 recover civil penalties for DEVIL MOUNTAIN, INC.'s herein-described Labor Code violations in
7 the amount one hundred dollars (\$100) for each Aggrieved Employee per pay period for the initial
8 violation, and two hundred and fifty dollars (\$250) for each Aggrieved Employee per pay period for
9 each subsequent violation.

10 **FIFTEENTH CAUSE OF ACTION**

11 **(Civil Penalties Under Labor Code § 2699 – Against DEVIL MOUNTAIN, INC.)**

12 138. Plaintiff re-alleges each and every allegation set forth in the preceding paragraphs
13 and incorporates each by reference as though fully set forth hereat.

14 139. Pursuant to Labor Code section 2699, subdivision (a), notwithstanding any other
15 provision of law, any provision of the Labor Code that provides for a civil penalty to be assessed
16 and collected by the LWDA or any of its departments, divisions, commissions, boards, agencies or
17 employees for a violation of the Labor Code may, as an alternative, be recovered through a civil
18 action brought by an aggrieved employee on behalf of himself or herself and other current or former
19 employees pursuant to the procedures specified in Labor Code section 2699.3.

20 140. Pursuant to Labor Code section 2699, subdivision (f), for all provisions of the Labor
21 Code except those for which a civil penalty is specifically provided, the established civil penalty for
22 a violation of those provisions is as follows: if, at the time of the alleged violation, the person
23 employs one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved
24 employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved
25 employee per pay period for each subsequent violation.

26 141. Plaintiff is informed and believes and based thereon alleges that DEVIL
27 MOUNTAIN, INC. violated the Labor Code sections described herein, including, without
28 limitation, for the failure to: pay overtime wages and minimum wages; provide meal and rest periods

1 or compensation in lieu thereof; provide accurate, itemized wage statements; pay timely wages
2 during employment and after employment separation; provide employees the opportunity to inspect
3 employment records; reimburse Aggrieved Employees for costs incurred in furtherance of their
4 work duties; reimburse Aggrieved Employees for deposits made plus interest thereon; provide
5 notice as required under Labor Code section 2810.5; and provide the proper accrual and use of paid
6 sick leave; paying employees all owed paid time off and vacation time owed by separation at the
7 proper rate of pay; and placing restraints on competition, whistleblowing and freedom of speech,
8 entitling Plaintiff and other Aggrieved Employees to civil penalties for each of these Labor Code
9 violations in the amounts set forth in Labor Code section 2699, subdivision (f).

10 142. Moreover, Plaintiff and other Aggrieved Employees within the State of California
11 whom he seeks to represent are entitled to an award of reasonable attorneys' fees and costs in
12 connection with their herein-described claims for civil penalties.

13 **DEMAND FOR JURY TRIAL**

14 143. Plaintiff demands a trial by jury on all causes of action contained herein.

15 **PRAYER**

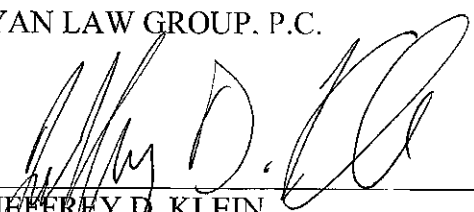
16 WHEREFORE, on behalf of Plaintiff and Class Members, Plaintiff prays for judgment
17 against Defendants as follows:

- 18 A. An order certifying this case as a Class Action;
- 19 B. An Order appointing Plaintiff as Class representative and appointing Plaintiff's
20 counsel as class counsel;
- 21 C. Damages for all wages earned and owed, including minimum and overtime wages
22 under Labor Code sections 510, 1194, 1197 and 1199;
- 23 D. Liquidated damages pursuant to Labor Code section 1194.2;
- 24 E. Damages for unpaid premium wages from missed meal and rest periods under,
25 among other Labor Code sections, 512, and 226.7;
- 26 F. Penalties for inaccurate wage statements under Labor Code section 226,
27 subdivision (e);
- 28 G. Waiting time penalties under Labor Code section 203;

- 1 H. Penalties to timely pay wages under Labor Code section 210;
2 I. Damages under Labor Code section 2802;
3 J. Preliminary and permanent injunctions prohibiting Defendants from further
4 violating the California Labor Code and requiring the establishment of appropriate
5 and effective means to prevent future violations;
6 K. Restitution of wages and benefits due which were acquired by means of any unfair
7 business practice, according to proof;
8 L. An award of civil penalties pursuant to Labor Code sections 210, 226.3, 558,
9 1174.5, 1197.1, and 2699;
10 M. Prejudgment and post-judgment interest at the maximum rate allowed by law;
11 N. For attorneys' fees in prosecuting this action;
12 O. For costs of suit incurred herein; and
13 P. For such other and further relief as the Court deems just and proper.
14

15 Dated: March 3, 2021

BIBIYAN LAW GROUP, P.C.

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17 BY: 

18 JEFFREY D. KLEIN
19 DAVID D. BIBIYAN

20 Attorneys for Plaintiff JOEL GALVAN MONTES on
21 behalf of himself and all others similarly situated and
22 aggrieved
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