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August 26, 2020

VIA ONLINE FILING SYSTEM¹

Labor and Workforce Development Agency
Department of Industrial Relations
Accounting Unit
455 Golden Gate Avenue, 10th Floor
San Francisco, CA 94102

Re: Rosas v. Mountain F. Enterprises, Inc.

Dear Madam/Sir:

I am writing this letter to the Labor and Workforce Development Agency ("LWDA") pursuant to the provisions of the California Labor Code Sections 2699 and 2699.3. The purpose of this letter is to inquire whether the LWDA intends to investigate and seek civil penalties associated with my client's allegations of violations of the Labor Code by his former employer.

My firm has been retained by Mr. Santiago Rosas ("Rosas" or "Plaintiff") concerning a wage and hour class action against his former employer. Rosas' former employer employed Rosas and other current and former aggrieved employees in California as part of its utility tree trimming and hazard tree removal service.

The following list sets forth the contact information for Rosas employer who referred to through the remainder of this letter as "Employer" or "Defendant":

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¹ Filed through the Labor and Workforce Development Agency online filing system at: <https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html>.

	Company Name	Contact Information
1.	Mountain F. Enterprises, Inc.	Mountain F. Enterprises, Inc. c/o Timothy A. Charshaf 950 Iron Point Rd., Suite 120 Folsom, CA 95630

My client worked for Defendant as an hourly, non-exempt employee in California as a Groundman Helper from approximately 2010 until his termination on July 10, 2020. The following is the summary of my client's wage and hour allegations.

Failure to pay minimum wage, earned rate, and/or overtime wage, if applicable, to non-exempt employees for all hours worked: California law requires that an employer pay wages to non-exempt, hourly employees for all hours worked. California requires that this be paid at the minimum wage rate, the employee's earned rate, or at an overtime rate if the time worked occurs when an employee has already worked over 8 hours in a day, over 40 hours in a week, or is working on a seventh consecutive day of work in a workweek. Defendant employed Plaintiff and other employees in California as non-exempt, hourly employees. At times within the one year prior to the filing of this notice, Defendant used policies and procedures of failing to pay for off the clock time and only paying scheduled shift time which resulted in Defendant not paying wages to Plaintiff and other non-exempt employees for compensable time the employees were subject to control of Defendant and/or were suffered and permitted to work. This unpaid time included but is not limited to the time Plaintiff and other aggrieved employees were required to show up before their scheduled shift to perform duties such as gathering tools. This time also included time after the employees shift when work, traveling back to the yard, and engaging in duties at the yard to put away tools would run past the end of their scheduled shift. This time also included the 30 minutes' time deducted for Plaintiff and other aggrieved employees meal periods even when they received a meal period of less than 30 minutes or did not receive a meal period. Defendant's practice of only paying employees for their scheduled shift resulted in Plaintiff and other aggrieved n non-exempt employees working time which Defendant failed to provide wages at a minimum wage rate, overtime rate if applicable, and earned wage rate in violation of Labor Code sections 204, 510, 1194, 1197, 1198, and the Wage Orders.

Failure to provide all legally required and legally compliant meal breaks to non-exempt employees: California law requires employers to provide employees with a 30-minute uninterrupted meal period for each five hours of work before the end of each fifth hour of work during which time the employee is relieved of all duties and employer control. (Wage Order 9, subd. 11; *Brinker Rest. Corp. v. Super. Ct.* (2012) 53 Cal.4th 1004, 1039, 1041.) Despite that California law requires employers to provide employees with meal periods when an employee's work shift is a minimum of five hours for each five hours worked; Defendant employed policies and procedures which failed to provide Plaintiff and other employees with uninterrupted duty free 30 minute meal periods for each five hours worked and/or failed to provide timely meal periods. At times within the one year prior to the filing of this notice, Defendant provided Plaintiff and other employees with meal periods which were shorter than 30 minutes or occurred

after the 5th hour of work. In addition, Defendant only provided at most one meal period per day regardless of the number of hours the employees' worked. At times, Plaintiff and other employees would work longer than 10 hours in a day, but Defendant did not provide them a second meal period. These practices resulted in Plaintiff and other employees not receiving proper meal periods and/or wages to compensate them for workdays which Defendant did not provide them with all legally required and legally compliant meal periods in violation of Labor Code sections 226.7, 512, 1198 and the Wage Orders.

Failure to provide all legally required and legally compliant rest breaks to non-exempt employees: California law requires employers to provide employees with "10 minutes' rest for shifts from three and one-half to six hours in length, 20 minutes for shifts of more than six hours up to 10 hours, 30 minutes for shifts of more than 10 hours up to 14 hours, and so on." (*Brinker Rest. Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1029.) The employees must be completely relieved of work duties and employer control during the rest period and cannot be required to stay on the premises during breaks. (*Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, 264-272.) Defendant employed a policy and procedure which failed to provide Plaintiff and other employees with legally compliant rest periods. At times, Plaintiff and other employees worked over 3.5 hours in a workday but did not receive rest breaks. In addition, Defendant's rest period policy failed to provide rest periods for every "major fraction thereof" of four-hour work periods. Accordingly, pursuant to this policy Defendant did not provide for a second rest period if employees worked more than 6 hours but less than 8 hours or a third rest period if employees worked more than 10 hours but less than 12 hours. Defendant would only provide at most one rest break (which was often not provided) when employees worked up to a ten-hour workday. Thus, Plaintiff and other employees would work more than 6 hours up to 10 hours and would not receive a second rest period. When Plaintiff and other employees worked 10 hours or more, Defendant at times would provide at most two rest periods (although the rest periods were often not provided). Thus, employees would work over 10 hours but would not receive a third rest break. Defendant's rest period practices and failure to adopt a legally compliant rest period policy resulted in Plaintiff and all other non-exempt employees not receiving legally compliant rest breaks or wages to compensate them for workdays which Defendant did not provide them with legally compliant rest breaks in violation of Labor Code sections 226.7, 1198, and the Wage Orders.

Violations of Labor Code sections 2802, 1198, and/or 221: Labor Code section 2802 requires employers to indemnify employees for all necessary expenditures or losses incurred by the employee in direct consequence of discharging his or her duties or obedience of directions of the employer. Labor Code section 221 prohibits employers from deducting any amounts from an employee's wages. Labor Code section 1198 requires employers to comply with the conditions required by the Wage Orders and subdivision 8 of the Wage Orders prohibits an employer from deducting from an employee's wages or from charging an employee for negligent cash shortages, breakage, or loss of equipment. Defendant had a policy in place which required employees to pay for lost or damaged company property. For example, twice in 2020 with the last time in July 2020, Defendant deducted \$350 from Plaintiff's wages each time for lost tools and did not reimburse him this amount. This practice improperly charged Plaintiff and other aggrieved employees with losses incurred as part of their employment without reimbursement and violated Labor Code sections 2802, 1198, and 221.

Failure to Keep Accurate Records: California law requires an employer to keep accurate records showing when employees began and ended each work period, meal periods, and total daily hours worked. As noted above, as a result of Defendant's failure to record time prior or after Plaintiff and other employees' scheduled shift spent engaged in duties (e.g., gathering tools, putting away tools, traveling back to the yard) and to accurately record meal periods (e.g., when employees' meal periods were shorter than 30 minutes and they returned to work), Defendants failed to keep accurate records of Plaintiff and other aggrieved employees' hours worked daily, time records showing when employees began and ended each work period, meal periods, and total daily hours worked in violation of Labor Code sections 1174, 1198, and the Wage Orders.

Failure to Provide Complete and Accurate Itemized Statements ("Pay Stubs") to Non-exempt Employees: California law requires an employer to provide employees at the time of payment of their wages an accurate itemized statement accurately listing all information required in Labor Code section 226, subdivision (a). Defendant failed to provide accurate itemized statements to Plaintiff and other non-exempt employees. As a result of the conduct alleged above in more detail (e.g., failure to pay wages for all hours worked and failure to pay meal and rest period wages), the wage statements Defendant provided to Plaintiff and other aggrieved employees were inadequate because they did not state the accurate amount of gross wages earned, total hours worked, net wages earned, and number of hours worked at each rate in effect during the pay period. Defendant applied these policies and procedures to Plaintiff and other aggrieved employees in California which resulted in Defendant failing to provide complete and accurate wage statements to Plaintiff and other employees in violation of Labor Code section 226.

Failure to Timely Pay Former California Non-Exempt Employees All Wages During Their Employment and Due at Time of Termination/Resignation: Labor Code section 204 requires that an employer pay employees their earned wages timely during their employment. (Lab. Code §204 [requiring payment of wages earned between 1st and 15th day between 16th and 26th day of month and wages earned between 16th and last day between 1st and 10th day of following month].) In addition, an employer is required to pay all unpaid wages timely after an employee's employment ends. The wages are due immediately upon termination (Lab. Code §201) or within 72 hours of resignation (Lab. Code §202). Because Defendant failed to pay Plaintiff and other non-exempt employees with all wages (including unpaid minimum wage, earned wages, and overtime wages and unpaid premium wages for missed meal and/or rest breaks all as described in more detail above) during their employment and never paid these amounts after separation of employment; Defendant failed to timely pay the employees these unpaid wages after each employee's termination and/or resignation. As a result, Defendant violated Labor Code section 204 by not paying Plaintiff and other aggrieved employees earned wages timely during his employment and violated Labor Code sections 201 and 202 by failing to timely pay Plaintiff and other aggrieved employees all wages following separation of employment.

My client has filed or will shortly file a civil class action concerning his wage claims as warranted by Labor Code sections 201, 202, 203, 204, 221, 226, 226.7, 510, 512, 1194, 1197, 1198, and 2802. This letter is being sent to you as an inquiry into whether LWDA wishes to investigate my client's allegations for any civil penalties associated with Defendant's violations of the Labor Code.

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Thank you for your assistance and cooperation in his matter. Please call me if you have any questions.

Very truly yours;

LAVI & EBRAHIMIAN, LLP



Jordan D. Bello

cc: Mountain F. Enterprises, Inc. (U.S. certified mail 7019-0140-0000-6435-4051)