

1 **BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP**

2 Norman B. Blumenthal (State Bar #068687)

3 Kyle R. Nordrehaug (State Bar #205975)

4 Aparajit Bhowmik (State Bar #248066)

5 Nicholas J. De Blouw (State Bar #280922)

6 2255 Calle Clara

7 La Jolla, CA 92037

8 Telephone: (858)551-1223

9 Facsimile: (858) 551-1232

10 Website: www.bamlawca.com

11 Attorneys for Plaintiff

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

13 **IN AND FOR THE COUNTY OF SACRAMENTO**

14 MATTHEW PLACE, on behalf of the
15 State of California, as a private attorney
16 general,

17 Plaintiff,

18 vs.

19 MOUNTAIN F. ENTERPRISES, INC., a
20 California Corporation; and Does 1 through
21 50, Inclusive;

22 Defendants.

Case No. _____

REPRESENTATIVE ACTION
COMPLAINT FOR:

1. Civil Penalties Pursuant to Labor Code
§ 2699, *et seq.*, for violations of Labor
Code §§ 201, 202, 203, 204 *et seq.*, 210,
226(a), 226.7, 351, 510, 512, 558(a)(1)(2),
1194, 1197, 1197.1, 1198, 2802,
California Code of Regulations, Title 8,
Section 11040, Subdivision 5(A)-(B)

1 Plaintiff Matthew Place (“PLAINTIFF”) on behalf of the people of the State of
2 California and as an “aggrieved employee” acting as a private attorney general under the Labor
3 Code Private Attorney General Act of 2004, § 2699, *et seq.* (“PAGA”) only, alleges on
4 information and belief, except for his own acts and knowledge which are based on personal
5 knowledge, the following:

6 **INTRODUCTION**

7 1. PLAINTIFF brings this action against Defendant MOUNTAIN F. ENTERPRISES,
8 INC. (“DEFENDANT”) seeking only to recover PAGA civil penalties for himself, and on
9 behalf of all current and former aggrieved employees that worked for DEFENDANT.
10 PLAINTIFF does **not seek to recover anything other than penalties as permitted by**
11 **California Labor Code § 2699**. To the extent that statutory violations are mentioned for wage
12 violations, PLAINTIFF does not seek underlying general and/or special damages for those
13 violations, but simply the civil penalties permitted by California Labor Code § 2699.

14 2. California has enacted the PAGA to permit an individual to bring an action on
15 behalf of himself and on behalf of others for PAGA penalties *only*, which is the precise and sole
16 nature of this action.

17 3. Accordingly, PLAINTIFF seeks to obtain all applicable relief for
18 DEFENDANT’s violations under PAGA and solely for the relief as permitted by PAGA – that
19 is, penalties and any other relief the Court deems proper pursuant to the PAGA. Nothing in this
20 complaint should be construed as attempting to obtain any relief that would not be available in
21 a PAGA-only action.

22 **THE PARTIES**

23 4. Defendant Mountain F. Enterprises, Inc. (“DEFENDANT”) is a California
24 corporation that at all relevant times mentioned herein conducted and continues to conduct
25 substantial and regular business throughout California.

26 5. DEFENDANT was founded in 1984 as a full-service line clearance contractor for
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1 utility companies and prime contractors. DEFENDANT's headquarters are in Sacramento
2 County where PLAINTIFF worked for DEFENDANT.

3 6. PLAINTIFF was employed by DEFENDANT in California as a non-exempt
4 employee entitled to overtime pay and meal and rest periods from September of 2019 to
5 November of 2020. PLAINTIFF was at all times relevant mentioned herein classified by
6 DEFENDANT as a non-exempt employee paid in whole or in part on an hourly basis and
7 received additional compensation from DEFENDANT in the form of non-discretionary
8 incentive wages.

9 7. PLAINTIFF, and such persons that may be added from time to time who satisfy
10 the requirements and exhaust the administrative procedures under the Private Attorney General
11 Act, brings this Representative Action on behalf of the State of California with respect to
12 himself and all individuals who are or previously were employed by DEFENDANT in
13 California and classified as non-exempt employees ("AGGRIEVED EMPLOYEES") during
14 the time period of January 5, 2020 until a date as determined by the Court (the "PAGA
15 PERIOD").

16 8. PLAINTIFF, on behalf of himself and all AGGRIEVED EMPLOYEES presently
17 or formerly employed by DEFENDANT during the PAGA PERIOD, brings this representative
18 action pursuant to Labor Code § 2699, *et seq.* seeking fixed civil penalties for DEFENDANT's
19 violation of California Labor Code §§201, 202, 203, 204 *et seq.*, 210, 226(a), 226.7, 351, 510,
20 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8,
21 Section 11040, Subdivision 5(A)-(B), and the applicable Wage Order.¹ Based upon the
22 foregoing, PLAINTIFF and all AGGRIEVED EMPLOYEES are aggrieved employees within
23 the meaning of Labor Code § 2699, *et seq.*

24 9. The true names and capacities, whether individual, corporate, subsidiary,
25 partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently
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27 ¹Plaintiff specifically excludes and/or does not allege any claims under California Labor
28 Code §558(a)(3).

1 unknown to PLAINTIFF who therefore sues these Defendants by such fictitious names pursuant
2 to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege
3 the true names and capacities of Does 1 through 50, inclusive, when they are ascertained.
4 PLAINTIFF is informed and believes, and based upon that information and belief alleges, that
5 the Defendants named in this Complaint, including DOES 1 through 50, inclusive, are
6 responsible in some manner for one or more of the events and happenings that proximately
7 caused the injuries and damages hereinafter alleged.

8 10. The agents, servants and/or employees of the Defendants and each of them acting
9 on behalf of the Defendants acted within the course and scope of his, her or its authority as the
10 agent, servant and/or employee of the Defendants, and personally participated in the conduct
11 alleged herein on behalf of the Defendants with respect to the conduct alleged herein.
12 Consequently, the acts of each Defendant are legally attributable to the other Defendants and
13 all Defendants are jointly and severally liable to PLAINTIFF and the other AGGRIEVED
14 EMPLOYEES, for the loss sustained as a proximate result of the conduct of the Defendants'
15 agents, servants and/or employees.

16 17 **THE CONDUCT**

18 11. During the PAGA PERIOD, DEFENDANT failed and continues to fail to
19 accurately calculate and pay PLAINTIFF and the other AGGRIEVED EMPLOYEES for their
20 minimum and overtime wages. DEFENDANT unlawfully and unilaterally failed to accurately
21 calculate minimum and overtime wages for time worked by PLAINTIFF and other
22 AGGRIEVED EMPLOYEES in order to avoid paying these employees the correct
23 compensation. As a result, PLAINTIFF and the other AGGRIEVED EMPLOYEES forfeited
24 wages due them for working without compensation at the correct minimum wage and overtime
25 rates. DEFENDANT's policy and practice to not pay the AGGRIEVED EMPLOYEES the
26 correct compensation for all time worked in accordance with applicable law is evidenced by
27 DEFENDANT's business records. This policy and practice of DEFENDANT was intended to
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1 purposefully avoid the payment of the correct compensation as required by California law which
2 allowed DEFENDANT to illegally profit and gain an unfair advantage over competitors who
3 complied with the law.

4 12. During the PAGA PERIOD, DEFENDANT failed to accurately record and pay
5 PLAINTIFF and other AGGRIEVED EMPLOYEES for the actual amount of time these
6 employees worked. Pursuant to the Industrial Welfare Commission Wage Orders,
7 DEFENDANT is required to pay PLAINTIFF and other AGGRIEVED EMPLOYEES for all
8 time worked, meaning the time during which an employee was subject to the control of an
9 employer, including all the time the employee was permitted or suffered to permit this work.
10 DEFENDANT required these employees to work off the clock without paying them for all the
11 time they were under DEFENDANT's control. Specifically, DEFENDANT required
12 PLAINTIFF to show up before their scheduled shift to perform duties such as gathering tools,
13 traveling back to the yard and engaging in duties after clocked out. Though PLAINTIFF arrived
14 for his shift well before his prescribed clock-in time to debrief his team for the work day ahead,
15 he was under strict instructions to avoid clocking in until directed by management to do so.
16 Additionally, at the conclusion of his work, PLAINTIFF was instructed to clock-out at 7:30pm
17 despite the fact that he often still had hours of work remaining and numerous daily reports to
18 complete. Additionally, PLAINTIFF worked during what was supposed to be his off-duty meal
19 break. PLAINTIFF was from time to time interrupted by work assignments. Indeed there were
20 days where PLAINTIFF did not even receive a partial lunch. Further, PLAINTIFF and other
21 AGGRIEVED EMPLOYEES from time to time were not paid wages for all time worked,
22 including overtime wages, such that in the aggregate employees were underpaid wages as a
23 result of DEFENDANT's pattern and practice of unevenly rounding time worked by its
24 employees. As a result, PLAINTIFF and other AGGRIEVED EMPLOYEES forfeited minimum
25 wage and overtime compensation by working without their time being accurately recorded and
26 without compensation at the applicable minimum wage and overtime rates. To the extent that
27 the time worked off the clock did not qualify for overtime premium payment, DEFENDANT
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1 failed to pay minimum wages for the time worked off-the-clock in violation of Cal. Lab. Code
2 §§ 1194, 1197, and 1197.1.

3 13. State and federal law provides that employees must be paid overtime at one-and-
4 one-half times their “regular rate of pay.” PLAINTIFF and other AGGRIEVED EMPLOYEES
5 were compensated at an hourly rate plus incentive pay that was tied to specific elements of an
6 employee’s performance.

7 14. The second component of PLAINTIFF’s and other AGGRIEVED EMPLOYEES’
8 compensation was DEFENDANT’s non-discretionary incentive program that paid PLAINTIFF
9 and other AGGRIEVED EMPLOYEES incentive wages based on their performance for
10 DEFENDANT. The non-discretionary incentive program provided all employees paid on an
11 hourly basis with incentive compensation when the employees met the various performance
12 goals set by DEFENDANT. However, when calculating the regular rate of pay in order to pay
13 overtime to PLAINTIFF and other AGGRIEVED EMPLOYEES, DEFENDANT failed to
14 include the incentive compensation as part of the employees’ “regular rate of pay” for purposes
15 of calculating overtime pay. Management and supervisors described the incentive program to
16 potential and new employees as part of the compensation package. As a matter of law, the
17 incentive compensation received by PLAINTIFF and other AGGRIEVED EMPLOYEES must
18 be included in the “regular rate of pay.” The failure to do so has resulted in a underpayment of
19 overtime compensation to PLAINTIFF and other AGGRIEVED EMPLOYEES by
20 DEFENDANT. DEFENDANT further underpaid sick pay wages to PLAINTIFF and other
21 AGGRIEVED EMPLOYEES by failing to pay such wages at the regular rate of pay.
22 Specifically, PLAINTIFF and other AGGRIEVED EMPLOYEES regularly earn
23 non-discretionary remuneration, including but not limited to, incentives, shift differential pay,
24 and bonuses. Rather than pay sick pay at the regular rate of pay, DEFENDANT underpaid sick
25 pay to PLAINTIFF and other AGGRIEVED EMPLOYEES at their base rates of pay.

26 15. In violation of the applicable sections of the California Labor Code and the
27 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT
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1 intentionally and knowingly failed to compensate PLAINTIFF and the other AGGRIEVED
2 EMPLOYEES at the correct rate of pay for all overtime worked. This policy and practice of
3 DEFENDANT is intended to purposefully avoid the payment of the correct overtime
4 compensation as required by California law which allowed DEFENDANT to illegally profit and
5 gain an unfair advantage over competitors who complied with the law. To the extent equitable
6 tolling operates to toll claims by the AGGRIEVED EMPLOYEES against DEFENDANT, the
7 PAGA PERIOD should be adjusted accordingly.

8 16. As a result of their rigorous work schedules, PLAINTIFF and other
9 AGGRIEVED EMPLOYEES were from time to time unable to take off duty meal breaks and
10 were not fully relieved of duty for meal periods. PLAINTIFF and other AGGRIEVED
11 EMPLOYEES were from time to time required to perform work as ordered by DEFENDANT
12 for more than five (5) hours during a shift without receiving an off-duty meal break. Further,
13 DEFENDANT failed to provide PLAINTIFF and AGGRIEVED EMPLOYEES with a second
14 off-duty meal period from time to time in which these employees were required by
15 DEFENDANT to work ten (10) hours of work. PLAINTIFF and the other AGGRIEVED
16 EMPLOYEES therefore forfeited meal breaks without additional compensation and in
17 accordance with DEFENDANT's corporate policy and practice.

18 17. During the PAGA PERIOD, PLAINTIFF and other AGGRIEVED EMPLOYEES
19 were from time to time also required to work in excess of four (4) hours without being provided
20 ten (10) minute rest periods. Further, these employees were denied their first rest periods of at
21 least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours, a first and
22 second rest period of at least ten (10) minutes for some shifts worked of between six (6) and
23 eight (8) hours, and a first, second and third rest period of at least ten (10) minutes for some
24 shifts worked of ten (10) hours or more from time to time. PLAINTIFF and other
25 AGGRIEVED EMPLOYEES were also not provided with one hour wages in lieu thereof. As
26 a result of their rigorous work schedules, PLAINTIFF and other AGGRIEVED EMPLOYEES
27 were periodically denied their proper rest periods by DEFENDANT and DEFENDANT's
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1 managers. Additionally, the applicable California Wage Order requires employers to provide
2 employees with off-duty rest periods, which the California Supreme Court defined as time
3 during which an employee is relieved from all work related duties and free from employer
4 control. In so doing, the Court held that the requirement under California law that employers
5 authorize and permit all employees to take rest period means that employers must relieve
6 employees of all duties and relinquish control over how employees spend their time which
7 includes control over the locations where employees may take their rest period. Employers
8 cannot impose controls that prohibit an employee from taking a brief walk - five minutes out,
9 five minutes back. Here, DEFENDANT's policy restricted PLAINTIFF and other
10 AGGRIEVED EMPLOYEES from unconstrained walks and was unlawful based on
11 Defendant's rule which stated PLAINTIFF and other AGGRIEVED EMPLOYEES could not
12 leave the work premises during their rest period.

13 18. From time to time, DEFENDANT also failed to provide PLAINTIFF and the
14 other AGGRIEVED EMPLOYEES with complete and accurate wage statements which failed
15 to show, among other things, the correct gross and net wages earned and correct amount of time
16 worked. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her
17 employees with an accurate itemized wage statement in writing showing, among other things,
18 gross wages earned and all applicable hourly rates in effect during the pay period and the
19 corresponding amount of time worked at each hourly rate. Specifically, DEFENDANT violated
20 Section 226 by failing to identify the correct rates of pay and number of hours worked. Aside,
21 from the violations listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFF
22 an itemized wage statement that lists all the requirements under California Labor Code 226 *et*
23 *seq.* As a result, DEFENDANT from time to time provided PLAINTIFF and the other
24 AGGRIEVED EMPLOYEES with wage statements which violated Cal. Lab. Code § 226.

25 19. DEFENDANT intentionally and knowingly failed to reimburse and indemnify
26 PLAINTIFF and the other AGGRIEVED EMPLOYEES for required business expenses
27 incurred by the PLAINTIFF and other AGGRIEVED EMPLOYEES in direct consequence of
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1 discharging their duties on behalf of DEFENDANT. Under California Labor Code Section
2 2802, employers are required to indemnify employees for all expenses incurred in the course
3 and scope of their employment. Cal. Lab. Code § 2802 expressly states that "an employer shall
4 indemnify his or her employee for all necessary expenditures or losses incurred by the employee
5 in direct consequence of the discharge of his or her duties, or of his or her obedience to the
6 directions of the employer, even though unlawful, unless the employee, at the time of obeying
7 the directions, believed them to be unlawful."

8 20. In the course of their employment PLAINTIFF and other AGGRIEVED
9 EMPLOYEES as a business expense, were required by DEFENDANT to use their own personal
10 cellular phones as a result of and in furtherance of their job duties as employees for
11 DEFENDANT but were not reimbursed or indemnified by DEFENDANT for the cost
12 associated with the use of their personal cellular phones for DEFENDANT's benefit.
13 Specifically, PLAINTIFF and other AGGRIEVED EMPLOYEES were required by
14 DEFENDANT to use their personal cellular phones to for work related issues. As a result, in
15 the course of their employment with DEFENDANT, PLAINTIFF and other AGGRIEVED
16 EMPLOYEES incurred unreimbursed business expenses which included, but were not limited
17 to, costs related to the use of their personal cellular phones all on behalf of and for the benefit
18 of DEFENDANT.

19 21. By reason of this conduct applicable to PLAINTIFF and all AGGRIEVED
20 EMPLOYEES, DEFENDANT engaged in a company-wide policy and procedure which failed
21 to accurately calculate and record the correct overtime rate for the overtime worked by
22 PLAINTIFF and other AGGRIEVED EMPLOYEES. The proper calculation of these
23 employees' overtime hour rates is the DEFENDANT's burden. As a result of DEFENDANT's
24 intentional disregard of the obligation to meet this burden, DEFENDANT failed to properly
25 calculate and/or pay all required overtime compensation for work performed by the
26 AGGRIEVED EMPLOYEES and violated the California Labor Code and regulations
27 promulgated thereunder as herein alleged.

1 22. All of the conduct and violations alleged herein occurred during the PAGA
2 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect
3 PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations that
4 affected other AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.* 2018
5 AJDAR 12157 (Certified for Publication 12/19/18).

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7 **JURISDICTION AND VENUE**

8 23. This Court has jurisdiction over this Action pursuant to California Code of Civil
9 Procedure, Section 410.10.

10 24. Venue is proper in this Court pursuant to California Code of Civil Procedure,
11 Sections 395 and 395.5, because DEFENDANT (i) currently maintains and at all relevant times
12 maintained offices and facilities in this County and/or conducts substantial business in this
13 County, and (ii) committed the wrongful conduct herein alleged in this County against
14 PLAINTIFF and the AGGRIEVED EMPLOYEES.

15 **FIRST CAUSE OF ACTION**

16 **For Violation of the Private Attorneys General Act**

17 **[Cal. Lab. Code §§ 2698, *et seq.*]**

18 **(By PLAINTIFF and Against All Defendants)**

19 25. PLAINTIFF incorporates by reference the allegations set forth in the prior
20 paragraphs as though fully set forth at this point.

21 26. PAGA is a mechanism by which the State of California itself can enforce state
22 labor laws through the employee suing under the PAGA who do so as the proxy or agent of the
23 state's labor law enforcement agencies. An action to recover civil penalties under PAGA is
24 fundamentally a law enforcement action designed to protect the public and not to benefit private
25 parties. The purpose of the PAGA is not to recover damages or restitution, but to create a
26 means of "deputizing" citizens as private attorneys general to enforce the Labor Code. In
27 enacting PAGA, the California Legislature specified that "it was ... in the public interest to
28 allow aggrieved employees, acting as private attorneys general to recover civil penalties for

1 Labor Code violations ..." Stats. 2003, ch. 906, § 1. Accordingly, PAGA claims cannot be
2 subject to arbitration.

3 27. PLAINTIFF, and such persons that may be added from time to time who satisfy
4 the requirements and exhaust the administrative procedures under the Private Attorney General
5 Act, brings this Representative Action on behalf of the State of California with respect to
6 himself and all individuals who are or previously were employed by DEFENDANT in
7 California and classified as non-exempt employees (the "AGGRIEVED EMPLOYEES") during
8 the time period of January 5, 2020 until a date as determined by the Court (the "PAGA
9 PERIOD").

10 28. On January 5, 2021, PLAINTIFF gave written notice by electronic mail to the
11 Labor and Workforce Development Agency (the "Agency") and by certified mail to the
12 employer of the specific provisions of this code alleged to have been violated as required by
13 Labor Code § 2699.3. The statutory waiting period for PLAINTIFF to add these allegations to
14 the Complaint has expired. As a result, pursuant to Section 2699.3, PLAINTIFF may now
15 commence a representative civil action under PAGA pursuant to Section 2699 as the proxy of
16 the State of California with respect to all AGGRIEVED EMPLOYEES as herein defined.

17 29. The policies, acts and practices heretofore described were and are an unlawful
18 business act or practice because DEFENDANT (a) fails to provide PLAINTIFF and the other
19 AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) fails to properly record
20 and provide legally required meal and rest periods, (c) fails to pay overtime wages, (d) fails to
21 pay minimum wages, (e) fails to pay wages when due, (f) fails to reimburse for necessary
22 business expenses incurred, all in violation of the applicable Labor Code sections listed in
23 Labor Code Sections §§201, 202, 203, 204 *et seq.*, 210, 226(a), 226.7, 351, 510, 512,
24 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section
25 11040, Subdivision 5(A)-(B), and the applicable Industrial Wage Order(s), and thereby gives
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1 rise to civil penalties as a result of such conduct.² PLAINTIFF hereby seeks recovery of only
2 civil penalties as prescribed by the Labor Code Private Attorney General Act of 2004 as the
3 representative of the State of California for the illegal conduct perpetrated on PLAINTIFF and
4 the other AGGRIEVED EMPLOYEES.

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6 **PRAYER FOR RELIEF**

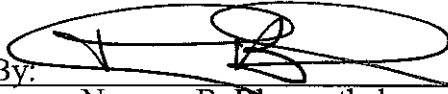
7 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and
8 severally, as follows:

9 1. On behalf of the State of California and with respect to all AGGRIEVED
10 EMPLOYEES:

11 A) Recovery of civil penalties as prescribed by the Labor Code Private
12 Attorneys General Act of 2004; and,

13 B) An award of attorneys' fees and cost of suit, as allowable under the
14 law, including, but not limited to, pursuant to Labor Code §2699.

15 Dated: March 16, 2021 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW
16 LLP

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18 By: 

19 Norman B. Blumenthal
20 Attorneys for Plaintiff
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27 ²Plaintiff specifically excludes and/or does not allege any claims under California Labor
28 Code §558(a)(3).