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SHIRLEY E. FAUST, CLERK
By Deputy

MONTANA FOURTH JUDICIAL DISTRICT COURT, MISSOULA COUNTY

KYLE SAMPLE

Plaintiff,

v.

LEE ENTERPRISES, an Iowa Corporation, THE MISSOULIAN, owned by Lee Enterprises, KATHY BEST, in her official capacity of Editor-in-Chief of the Missoulian, BOB MESEROLL, in his official capacity of Sport's Editor at the Missoulian.

Defendants.

Cause No. DV-17-158

Department No. 4

Judge Karen S. Townsend

**COMPLAINT AND DEMAND
FOR JURY TRIAL**

Plaintiff Kyle Sample, by and through his counsel of record, Matthew B. Lowy and C. Olivia Erickson, of Lowy Law, P.L.L.C. for his Complaint against Defendants, states and alleges as follows:

PARTIES, JURISDICTION, AND VENUE

1. Plaintiff is Kyle Sample, and is represented by Lowy Law, PLLC. Mr. Sample is, and at all times relevant hereto was, a resident of Missoula County, Montana.

- 1 2. Defendant is Lee Enterprises, a corporation residing in Iowa, voluntarily
2 doing business in the State of Montana.
- 3 3. Defendant is The Missoulian, a corporation owned by Lee Enterprises, doing
4 business in the State of Montana.
- 5 4. Defendant is Kathy Best, Editor in Chief of the Missoulian newspaper.
- 6 5. Defendant is Bob Meseroll, Editor of the Sports section of the Missoulian
7 newspaper.
- 8 6. The events that form the basis of this complaint occurred in Missoula
9 County, Montana.
- 10 7. This Court has jurisdiction over the parties, and the matters alleged herein,
11 and the Fourth Judicial District Court in Missoula County is the proper place
12 of venue for this case to proceed.

13 **GENERAL ALLEGATIONS**

- 14 1. November 2012 Kyle was offered a part-time job at the Bozeman Daily
15 Chronicle. After months of driving to and from Bozeman every weekend, the
16 Chronicle offered him a temporary full-time job covering Montana State
17 University football. He then successfully worked his way into a permanent
18 position with the Chronicle.
- 19 2. September 2014, Kyle was offered a job as a sports reporter at the Helena
20 Independent Record, affording better pay and more artistic freedom. He
21 moved into this position, but heard of a job opening at the Missoulian a
22 month or two later and jumped at the opportunity.
- 23 3. January 27, 2015 Kyle began the full-time sports reporting job with the
24 Missoulian.
- 25 4. September 23, 2016 Kyle was terminated from the Missoulian.

1 5. During his employment with the Missoulian, Kyle had reason to object to the
2 paper's policies regarding overtime work and pay. He regularly worked well
3 over the 40 hour workweek expected by law, but rarely was actually paid for
4 this time. During 2015 and 2016 he worked over 400 hours of unpaid
5 overtime. The most recent time of unpaid overtime being the last month he
6 worked at the Missoulian. Management was fully aware of this, as early on
7 during his employment with the paper, his supervisor told him that there was
8 concern with the amount of hours he was reporting, so he needed to keep an
9 eye on them. And yet the amount of work he was expected to cover and
10 produce would not allow for him to maintain only 40 hours of work a week.
11 Kyle has stated that this is common practice at many newspapers, born out
12 of both pressure to produce a certain amount of coverage, and a lingering
13 hope that it will lead to a position with a decent wage.

14 APPLICABLE LAW TO ALL COUNTS

- 15
- 16 1. According to the Montana Supreme Court, the doctrine of *respondeat*
17 *superior* is when "the consequences of one person's actions may be
18 attributed to another person." Denke v. Shoemaker, 2008 MT 418 ¶ 73, 347
19 Mont. 322, 198 P.3d 284. This will be imposed upon an employer when an
20 employee is acting "within the scope of his or her duties to the employer,"
21 which is usually a question of fact, but becomes a question of law for the
22 court when "only one legal inference may reasonably be drawn from the
23 facts." Denke at ¶ 74.
- 24 2. In this case, this means that Lee Enterprises and the Missoulian as the
25 employers of the other defendants, Kathy Best and Bob Meseroll, are liable
26 for any actions taken by those two individuals in the scope of their
27 employment. For the purposes of this case, all claims laid against Kathy Best
28 and Bob Meseroll are for actions taken within the scope of their employment.

1 **COUNT ONE — WAGE AND HOUR CLAIM**

- 2 1. Kyle Sample repeats and incorporates by reference each and every statement
3 and allegation contained in all preceding paragraphs as though fully set forth
4 in this section.
- 5 2. Montana's Wages and Wage Protection Act, Mont. Cod Ann. § 39-3-201, *et*
6 *seq.*, requires that an employer pay its employees "the wages earned by the
7 employee...." Mont. Code Ann. § 39-3-204(1). This extends to the admonition
8 that "An employer may not employ any employee for a workweek longer than
9 40 hours unless the employee receives compensation for employment in
10 excess of 40 hours in a workweek at a rate of not less than 1 1/2 times the
11 hourly wage rate at which the employee is employed." Mont. Code Ann. §
12 39-3-405(1).
- 13 3. An employer who fails to pay its employee for earned overtime may be subject
14 to penalties of up to 110% of the unpaid overtime under Mont. Admin. R.
15 24.16.7561.
- 16 4. In this case, Kyle worked many hours of overtime during his time with the
17 Missoulian and was unpaid for most of them. During 2015 and 2016 he
18 worked over 400 hours of unpaid overtime. The last time when Defendants
19 failed to pay Kyle for overtime was during his last month on staff at the
20 Missoulian.
21

22 **PRAYER FOR RELIEF**

23 WHEREFORE, Plaintiff Kyle Sample move this Court to grant judgment as
24 follows:

- 25 1. Damages, including compensatory, punitive, general, and special
26 damages, as determined by the Court to be just and necessary under the
27 circumstances.
28

1 2. Award all fees incurred litigating this matter, including but not limited to
2 court costs, attorney's fees, and attorney's costs;

3 5. Any such other relief the Court deems just and proper.

4 RESPECTFULLY submitted this 9th day of February, 2017.

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14 Attorney for Plaintiff

11 **DEMAND FOR JURY TRIAL**

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13 Plaintiff Kyle Sample demands a trial by jury of all triable issues as a right
14 by jury, pursuant to Mont. Rule of Civ. Pro. 15.

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16 RESPECTFULLY submitted this 9th day of February, 2017.

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19 C. Olivia Erickson
20 Attorney for Plaintiff
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