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By _____, Deputy
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Attorneys for Plaintiff MICHAEL MOODY, in a Representative capacity only, and on behalf of other members of the general public similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SACRAMENTO**

MICHAEL MOODY, in a Representative
capacity only, and on behalf of other
members of the general public similarly
situated,

Plaintiff,

v.

VISION MECHANICAL, INC., an Idaho
Corporation; WARD MECHANICAL, INC.,
a business entity unknown; and DOES 1-10,
inclusive

Defendants

CASE NO.

COMPLAINT FOR:

1. MEAL AND REST PERIOD VIOLATIONS PURSUANT TO LABOR CODE § 2698 *et seq.*
2. MINIMUM WAGE VIOLATIONS PURSUANT TO LABOR CODE § 2698 *et seq.*
3. OVERTIME VIOLATIONS PURSUANT TO LABOR CODE § 2698 *et seq.*
4. WAGE STATEMENT VIOLATIONS PURSUANT TO LABOR CODE § 2698 *et seq.*
5. FAILURE TO REIMBURSE PURSUANT TO LABOR CODE § 2698 *et seq.*
6. FAILURE TO PAY WAGES UPON SEPARATION PURSUANT TO LABOR CODE § 2698 *et seq.*

Demand for Jury Trial

COMES NOW Plaintiff MICHAEL MOODY ("Plaintiff"), in a Representative capacity only, on behalf of all aggrieved employees, and on behalf of other members of the general public similarly situated, and alleges for his complaint as follows:

PARTIES, JURISDICTION, AND VENUE

1. This Court has jurisdiction over this matter in that all parties are residents of, or do business within, the State of California and the amount in controversy exceeds the statutory minimum limit of this Court. The monetary damages and restitution sought by Plaintiff exceed the minimal jurisdiction limits of the Superior Court and will be established according to proof at trial. Furthermore, there is no federal question at issue as Wage and Hour protections and remedies related thereto are based solely on California Law and Statutes, including the Labor Code, Civil Code, and IWC Wage Order(s). Also, the Ninth Circuit has recently held that, for purposes of establishing federal diversity jurisdiction, penalties pursuant to the Private Attorneys General Act of 2004 ("PAGA") may not be aggregated. *Urbino v. Orkin Servs. of California, Inc.*, 726 F.3d 1118, 1122 (9th Cir. 2013).
2. Venue before this Court is proper in that certain wrongful acts which gave rise to Plaintiff's injuries occurred in the County of Sacramento, State of California.
3. Plaintiff is informed and believes and thereon alleges that at all relevant times mentioned herein, Defendant VISION MECHANICAL, INC., (Referred to herein as "Defendants" or "VISION"), was and is an Idaho Corporation doing business throughout the state, including the County of Sacramento, State of California. Plaintiff is informed and believes and thereon alleges that at all relevant times mentioned herein, Defendant WARD MECHANICAL, INC., (Referred to herein as "Defendants" or "VISION"), was and is an business entity unknown doing business throughout the state, including the County of Sacramento, State of California.
4. Plaintiff is presently unaware of the true names, capacities and liability of Defendants named herein as DOES 1 through 10, inclusive. Accordingly, Plaintiff will seek leave of court to amend this complaint to allege their true names and capacities after the same have been ascertained.
5. Plaintiff is informed and believes and thereon alleges that each of the fictitiously named

1 Defendants is responsible in some manner for the wrongs and damages as herein alleged, and
2 in so acting was functioning as the agent, servant, partner, and employee of the co-defendants,
3 and in doing the actions mentioned below, was acting within the course and scope of his or her
4 authority as such agent, servant, partner, and employee with the permission and consent of the
5 co-defendants. Plaintiff's injuries as herein alleged were proximately caused by said
6 defendants. Wherever it is alleged herein that any act or omission was done or committed by
7 any specially named Defendant or Defendants, Plaintiff intends thereby to allege and does
8 allege that the same act or omission was also done and committed by each and every defendant
9 named as a DOE, both separately and in concert with the named Defendant or Defendants.

10 6. Plaintiff is informed and believes and thereon alleges that Defendants, and each of them,
11 including DOES 1 through 10, are and at all times herein mentioned were either individuals,
12 sole proprietorships, partnerships, registered professionals, corporations, alter egos or other
13 legal entities which were licensed to do and/or were doing business in the County of
14 Sacramento, State of California at all times relevant to the subject matter of this action.

15 FACTUAL BACKGROUND

16 7. On or about August, 2022, Plaintiff commenced working for Defendants. Plaintiff's
17 employment with Defendants lasted until January 28, 2023. Throughout his employment with
18 Defendants, Plaintiff has performed his job in a capable and competent manner and has been
19 commended for doing so.

20 8. Throughout the term of his employment, Plaintiff and all other aggrieved employees were, and
21 currently are, denied the benefits and protections of the Labor Code due to Defendants'
22 institutionalized pay practices, standard as to all of Defendants' California-based employees.

23 9. On April 20, 2023, counsel for Plaintiff prepared and submitted via online filing a letter to the
24 California Labor & Workforce Development Agency ("LWDA") as to Defendant VISION
25 MECHANICAL, INC. A copy of the letter was mailed to Defendant, via USPS Certified Mail.
26 (Please see **Exhibit 1**, a true and correct copy of this letter.) On April 20, 2023, counsel for
27 Plaintiff prepared and submitted via online filing a letter to the California Labor & Workforce
28 Development Agency ("LWDA") as to Defendant WARD MECHANICAL, INC. A copy of

1 the letter was mailed to Defendant, via USPS Certified Mail. (Please see **Exhibit 2**, a true and
2 correct copy of this letter.) These two letters contained the specific provisions of the California
3 Labor Code and Business and Professions Code violated by Defendants, as well as the facts
4 and theories in support of Plaintiff's claims.

- 5 10. The statutory time period for the LWDA to investigate and/or respond, and for the employer
6 to respond, has concluded.

7 **REPRESENTATIVE ALLEGATIONS**

- 8 11. As more specifically set forth below, Plaintiff brings this action in a representative capacity on
9 behalf of all current and former aggrieved employees of Defendants who performed work for
10 Defendants in California only. Code Civ. Proc. § 2699; *Arias v. Superior Court* (2009) 46 Cal.
11 4th 969, 980-981. Throughout the operative limitations period, Plaintiff and all other aggrieved
12 employees were denied the protections and benefits of the Labor Code due to Defendants'
13 standard practices. Throughout their employment, Plaintiff and all other aggrieved employees
14 were and are denied full and accurate compensation, including overtime compensation, in
15 violation of, *inter alia*, Labor Code sections 510, 1194, and 1197. Plaintiff and the other
16 aggrieved employees were and are denied Meal and Rest Periods and Meal and Rest Period
17 payments, in violation of, *inter alia*, Labor Code sections 226.7 and 512. Defendants failed
18 to furnish accurate itemized wage statements in violation of, *inter alia*, Labor Code section
19 226. Defendants failed to reimburse Plaintiff and other aggrieved employees for necessary
20 business expenditures in violation of, *inter alia*, Labor Code section 2802. Defendants failed
21 to provide all compensation due at termination of employment in violation of, *inter alia*, Labor
22 Code sections 201 through 203.

- 23 12. Plaintiff brings this action on the grounds that he and other current and former aggrieved
24 employees of Defendants were and are improperly denied the mandated wages resulting from
25 the above-referenced violations. Code Civ. Proc. § 2699; *Arias*, 46 Cal. 4th at 980-981. The
26 number of current and former aggrieved employees is believed to exceed One-Hundred (100)
27 members.

- 28 13. The approximately One-Hundred (100) aggrieved employees are comprised of Defendants'

current or former California-based employees.

14. The questions of law and fact common to all aggrieved employees arising from Defendants' actions include, among others, the following:

- a. Whether Defendants failed to pay its employees the proper straight-time, overtime, and double time wages due and owing to them;
- b. Whether Defendants failed to pay its employees all compensation due and owing at termination of employment;
- c. Whether Defendants failed to provide its employees with statutorily-compliant Meal and/or Rest Periods, in violation of, *inter alia*, California Labor Code section 512 and 226.7, in that Defendants' written policies are not compliant with California law, and Defendants do not allow its employees duty-free Meal and/or Rest Periods on occasion;
- d. Whether Defendants failed to properly provide Meal and Rest Period Premiums in accordance with law;
- e. Whether Defendants failed to properly calculate and pay its employees overtime compensation or Meal and Rest Period Premiums in accordance with law by failing to properly calculate, into the Regular Rate of Pay, the value of all employee benefits and other non-discretionary compensation; and
- f. Whether Defendants failed to properly reimburse its employees for necessary business expenditures for, *inter alia*, cell phone costs and other work supplies, in violation of Labor Code section 2802.

15. At all times mentioned herein, Defendants were subject to the Labor Codes and Industrial Welfare Commission Wage Orders of the State of California, including, but not limited to, California Labor Code section 2698 *et seq.*

16. At all times mentioned herein, Defendants are and were "employers" as that term is used within the relevant sections of the California Labor Code.

17. Plaintiff has exhausted his administrative remedies and pre-filing requirements pursuant to California Labor Code section 2699.3, and has also fulfilled all notice requirements under the statute.

- 1 18. Throughout the operative limitations period, Plaintiff and all other aggrieved employees were
2 denied the protections and benefits of the Labor Code and IWC Wage Order(s) due to
3 Defendants' standard practices. Said violations are set forth below.

4 **FIRST CAUSE OF ACTION**
5 **Meal and Rest Period Violations Pursuant to Labor Code § 2698 et seq.**
6 **Representative Action**
7 **(By Plaintiff against Defendants and DOES 1 through 10)**

- 8 19. Plaintiff hereby incorporates by reference paragraphs 1 through 18 as though fully set forth
9 herein.

- 10 20. Labor Code section 1198 states:

11 The maximum hours of work and the standard conditions of labor fixed
12 by the commission shall be the maximum hours of work and the
13 standard conditions of labor for employees. The employment of any
14 employee for longer hours than those fixed by the order or under
15 conditions of labor prohibited by the order is unlawful.

16 Defendants violated this section by establishing working conditions below the standard of the
17 applicable Wage Order.

- 18 21. Under applicable California law, "An employer may not employ an employee for a work period
19 of more than five hours per day without providing the employee with a Meal Period of not less
20 than 30 minutes [...] An employer may not employ an employee for a work period of more than
21 10 hours per day without providing the employee with a second Meal Period of not less than
22 30 minutes" Lab. Code § 512(a); see also 8 Cal. Code Regs. § 11160 (10)(A).

- 23 22. Unless the employee is relieved of all duty during a thirty (30) minute Meal Period, the Meal
24 Period shall be considered an "on duty" Meal Period and counted as time worked. 8 Cal. Code
25 Regs. § 11160 (10).

- 26 23. California law requires employers to provide nonexempt employees with a 10-minute Rest
27 Period for every four hours worked, or "major fraction thereof." 8 Cal. Code Regs. § 11160
28 (10).

- 29 24. An employer who fails to provide Meal or Rest Periods as required by an applicable Wage
30 Order must pay the employee one additional hour of pay at the employee's regular rate of pay
for each workday that the Meal or Rest Period was not provided. Lab. Code § 226.7(b); 8 Cal.

1 Code Regs. § 11160 (10), (11).

2 25. Within the operative time period, Defendants failed to possess compliant Meal and Rest Period
3 policies.

4 26. For example, Defendants do not possess a legal Meal Period policy or legal Rest Period policy,
5 and makes no attempt to ensure that its employees are either timely or wholly provided Meal
6 Periods or Rest Periods.

7 27. Defendants would also pressure employees to either skip, or cut short, Meal Periods and Rest
8 Periods, based on order volume and coverage issues.

9 28. In addition, Defendants had notice of Plaintiff working outside of his scheduled and/or
10 reported hours, as well as within his Meal and Rest Periods, but failed to provide any
11 compensation for this work-time.

12 29. Defendants willfully failed and refused to pay Plaintiff and all other aggrieved employees one
13 additional hour of pay at their regular rate of pay for all workdays that a Meal or Rest Period
14 was not provided, as required by Labor Code section 226.7 and IWC Wage Order 16 § (10),
15 (11).

16 30. Any payments made by Defendants for non-compliant Meal Periods were not paid at the
17 employee's regular rate in violation of Labor Code section 226.7 and the operative IWC Wage
18 Orders. Instead, these payments were made at an employee's base rate and did not include the
19 value of, *inter alia*, all actual compensation owed, and/or all employee benefits such as, for
20 example, non-discretionary compensation and other employee benefits.

21 31. As a direct result of Defendants' failure to comply with the foregoing provisions of the Labor
22 Code, Plaintiff and all other aggrieved employees have been damaged in an amount to be
23 proven at trial.

24 32. As California Labor Code Section 2699 provides for civil penalties recoverable by Plaintiff on
25 behalf of himself and all other aggrieved employees by and through Labor Code section
26 2699.3, and as Plaintiff has complied with all pre-filing requirements, Plaintiff may recover
27 these penalties pursuant to Labor Code section 2699, as more specifically set forth in the below
28 Prayer For Relief.

1 33. Plaintiff seeks an award of statutory civil penalties for each underpaid employee of Defendants
2 pursuant to Labor Code sections 2699(a) for each of these employees.

3 34. Plaintiff also seeks an award of reasonable attorneys' fees and costs pursuant to Labor Code
4 section 2699(g)(1).

5 **SECOND CAUSE OF ACTION**
6 **Minimum Wage Violations Pursuant to Labor Code § 2698 et seq.**
7 **Representative Action**
8 **(By Plaintiff against Defendants and DOES 1 through 10)**

9 35. Plaintiff hereby incorporates by reference paragraphs 1 through 34 as though fully set forth
10 herein.

11 36. Defendants failed to pay its employees all compensation due in violation of, among other
12 statutes, Labor Code section 1197. California law holds that the failure to pay for any work
13 time constitutes a violation of minimum wage laws. *Armenta v. Osmose, Inc.*, (2005) 135 Cal.
14 App.4th 314, 323. These violations were caused by and through Defendants' failure to
15 maintain accurate Time Records (as required by California law), to the detriment of the
16 employees. Specifically, although Defendants would receive "to-the-minute" start and end
17 times (from their employees' mandated timekeeping practices), Defendants would thereafter
18 alter - and deduct time from - the Time Records, prior to payment of compensation to the
19 employees. Additionally, the right to receive the proper minimum wage compensation was
20 impacted by Defendants knowingly failing to consider other work performed by the employees,
21 including all time employees were under Defendants' control. These actions, and instructions,
22 caused the employees to lose compensation, including proper minimum wage compensation
23 and overtime compensation. Moreover, Defendants instructed its employees to "self-round"
24 their actual work-times, with a lack of specific instruction as to how to accurately - and
25 neutrally - perform such a function.

26 37. As a result of Defendants' failure to comply with the provisions of the Labor Code, Plaintiff
27 and all other aggrieved employees have been damaged in an amount to be proven at trial.

28 38. As California Labor Code Section 2699 provides for civil penalties recoverable by Plaintiff on
behalf of himself and all other aggrieved employees by and through Labor Code section

1 2699.3, and as Plaintiff has complied with all pre-filing requirements, Plaintiff may recover
2 these penalties pursuant to Labor Code section 2699, as more specifically set forth in the below
3 Prayer For Relief.

4 39. Plaintiff seeks an award of statutory civil penalties for each underpaid employee of Defendants
5 pursuant to Labor Code sections 2699(a) for each of these employees.

6 40. Plaintiff also seeks an award of reasonable attorneys' fees and costs pursuant to Labor Code
7 section 2699(g)(1).

8 **THIRD CAUSE OF ACTION**
9 **Overtime Violations Pursuant to Labor Code § 2698 et seq.**
10 **Representative Action**
11 **(By Plaintiff against Defendants and DOES 1 through 10)**

12 41. Plaintiff hereby incorporates by reference paragraphs 1 through 40 as though fully set forth
13 herein.

14 42. Defendants failed to pay Plaintiff and all other aggrieved employees all compensation,
15 including overtime compensation, due in violation of, among other statutes, Labor Code
16 section 510. These violations occurred due to Defendants' illegal policies, referenced above,
17 whereby employees experienced monetary under-compensation. The systematic failure to
18 provide proper overtime compensation is a violation of California law.

19 43. Additionally, Defendants also failed to provide the actual Overtime Rate of Pay by ignoring
20 certain compensation when calculating the Regular Rate of Pay including, but not limited to,
21 shift differentials, various forms of bonus and/or incentive pay, and the value of employee
22 benefits and employee discounts, in violation of Labor Code section 510.

23 44. As a direct result of Defendants' failure to comply with the foregoing provisions of the Labor
24 Code, Plaintiff and all other aggrieved employees have been damaged in an amount to be
25 proved at trial.

26 45. As California Labor Code Section 2699 provides for civil penalties recoverable by Plaintiff on
27 behalf of himself and all other aggrieved employees by and through Labor Code section
28 2699.3, and as Plaintiff has complied with all pre-filing requirements, Plaintiff may recover
these penalties pursuant to Labor Code section 2699, as more specifically set forth in the below

1 Prayer For Relief.

2 46. Plaintiff seeks an award of statutory civil penalties for each underpaid employee of Defendants
3 pursuant to Labor Code sections 2699(a) for each of these employees.

4 47. Plaintiff also seeks an award of reasonable attorneys' fees and costs pursuant to Labor Code
5 section 2699(g)(1).

6 **FOURTH CAUSE OF ACTION**
7 **Wage Statement Violations Pursuant to Labor Code § 2698 et seq.**
8 **Representative Action**
9 **(By Plaintiff against Defendants and DOES 1 through 10)**

10 48. Plaintiff hereby incorporates by reference paragraphs 1 through 47 as though fully set forth
11 herein.

12 49. Defendants failed to provide Plaintiff and all other aggrieved employees with accurate itemized
13 wage statements in violation of, among other statutes, Labor Code section 226. These
14 violations include, but are not limited to, Defendants' failure to accurately identify all
15 applicable regular and overtime (including double-time) rates of pay in violation of section
16 226(a)(9), and providing inaccurate representations of both "gross" and "net wages."
17 Defendants also failed to accurately list "all applicable hourly rates in effect during the pay
18 period and the corresponding number of hours worked at each hourly rate," in violation of
19 226(a)(9). Defendants also failed to provide an accurate showing of the "total hours worked,"
20 in violation of Labor Code section 226(a)(2).

21 50. Further, the Defendants' wage statement listings are confusing and employees cannot readily
22 ascertain their total hours worked, applicable rates, and all gross and net wages. As one
23 example, Defendants are apparently using a time calculating system other than "minutes", but
24 without explanation to the employees within the wage statement.

25 51. As a direct result of Defendants' failure to comply with the foregoing provisions of the Labor
26 Code, Plaintiff and all other aggrieved employees have been damaged in an amount to be
27 proven at trial.

28 52. As California Labor Code Section 2699 provides for civil penalties recoverable by Plaintiff on
behalf of himself and all other aggrieved employees by and through Labor Code section

1 2699.3, and as Plaintiff has complied with all pre-filing requirements, Plaintiff may recover
2 these penalties pursuant to Labor Code section 2699, as more specifically set forth in the below
3 Prayer For Relief.

4 53. Plaintiff seeks an award of statutory civil penalties for each underpaid employee of Defendants
5 pursuant to Labor Code sections 2699(a) for each of these employees.

6 54. Plaintiff also seeks an award of reasonable attorneys' fees and costs pursuant to Labor Code
7 section 2699(g)(1).

8 **FIFTH CAUSE OF ACTION**
9 **Failure to Reimburse Pursuant to Labor Code § 2698 et seq.**
10 **Representative Action**
11 **(By Plaintiff against Defendants and DOES 1 through 10)**

12 55. Plaintiff hereby incorporates by reference paragraphs 1 through 54 as though fully set forth
13 herein.

14 57. Defendants failed to reimburse their employees for all necessary business expenditures
15 incurred in direct consequence of the discharge of their duties in violation of, among other
16 statutes, Labor Code section 2802. These expenditures are the result of, *inter alia*, Defendants'
17 standard policies which require its employees to incur mileage, purchase work supplies, and
18 to use their own cell phones for work-related purposes, without reimbursement.

19 58. As a direct result of Defendants' failure to comply with the foregoing provisions of the Labor
20 Code, Plaintiff and all other aggrieved employees have been damaged in an amount to be
21 proven at trial.

22 59. As California Labor Code Section 2699 provides for civil penalties recoverable by Plaintiff on
23 behalf of himself and all other aggrieved employees by and through Labor Code section
24 2699.3, and as Plaintiff has complied with all pre-filing requirements, Plaintiff may recover
25 these penalties pursuant to Labor Code section 2699, as more specifically set forth in the below
26 Prayer For Relief.

27 60. Plaintiff seeks an award of statutory civil penalties for each underpaid employee of Defendants
28 pursuant to Labor Code sections 2699(a) for each of these employees.

61. Plaintiff also seeks an award of reasonable attorneys' fees and costs pursuant to Labor Code

1 section 2699(g)(1).

2 **SIXTH CAUSE OF ACTION**
3 **Failure to Pay Wages Upon Separation Pursuant to Labor Code § 2698 et seq.**
4 **Representative Action**
5 **(By Plaintiff against Defendants and DOES 1 through 10)**

6 62. Plaintiff hereby incorporates by reference paragraphs 1 through 61 as though fully set forth
7 herein.

8 63. Defendants failed to provide Plaintiff and other aggrieved employees with all wages earned and
9 unpaid at termination in violation of, among other statutes, Labor Code sections 201 through
10 203. These violations resulted from, among other unlawful actions, Defendants' willful failure
11 to provide accurate and complete compensation to aggrieved employees under Labor Code
12 sections 226.7, 510, 512, 1197, and 2802, as set forth above.

13 64. As a direct result of Defendants' failure to comply with the foregoing provisions of the Labor
14 Code, Plaintiff and all other aggrieved employees have been damaged in an amount to be
15 proven at trial.

16 65. As California Labor Code Section 2699 provides for civil penalties recoverable by Plaintiff on
17 behalf of himself and all other aggrieved employees by and through Labor Code section
18 2699.3, and as Plaintiff has complied with all pre-filing requirements, Plaintiff may recover
19 these penalties pursuant to Labor Code section 2699, as more specifically set forth in the below
20 Prayer For Relief.

21 66. Plaintiff seeks an award of statutory civil penalties for each underpaid employee of Defendants
22 pursuant to Labor Code sections 2699(a) for each of these employees.

23 67. Plaintiff also seeks an award of reasonable attorneys' fees and costs pursuant to Labor Code
24 section 2699(g)(1), and interest, pursuant to Labor Code section 218.6.

25 **PRAYER FOR RELIEF**

26 WHEREFORE, Plaintiff, on behalf of all aggrieved employees, prays for judgment as follows:

- 27 1. For an award of attorneys' fees and costs of suit herein pursuant to Labor Code section
28 2699(g)(1);
2. For an award of statutory civil penalties pursuant to Labor Code section 2699(f)(2); and

3. For such other relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby requests that this matter be heard and decided by trial by jury.

Dated: June 26, 2023

SULLIVAN & YAECKEL LAW GROUP, APC



Eric K. Yaeckel

Ryan T. Kuhn

Karoline D. Kitlowski

Attorneys for Plaintiff MICHAEL MOODY, in a
Representative capacity only, and on behalf of other
members of the general public similarly situated

Exhibit 1

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April 20, 2023

Labor and Workforce Development Agency
Attn. PAGA Administrator

Submitted Via Online Filing

Re: Michael Moody v. Vision Mechanical, Inc.
Our File No.: 7350

Dear Administrator:

Please allow this correspondence to serve as "written notice," as required by California Labor Code section 2699.3(a)(1), of the specific provisions of the California Labor Code believed to have been violated by Vision Mechanical, Inc., (hereinafter "Vision"), in the above referenced matter. This "written notice" is filed on behalf of Mr. Moody, and all current and former non-exempt employees employed by Vision. Thank you for your assistance and instruction on this issue.

The specific provisions alleged to have been violated by Vision are as follows:

CALIFORNIA LABOR CODE SECTIONS 201-203, 226, 226(a), 226.7, 510, 512, 1194, 1197.1, 1198.5 and 2802, as well as IWC Wage Order 16, and any other applicable wage orders, codified as Title 8, California Code of Regulations, section 11160 *et seq.*

Facts and theories supporting the allegations: Mr. Moody has been employed as a non-exempt employee for Vision from approximately August, 2022, through January 28, 2023.

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Throughout the term of Mr. Moody's employment, Vision required Mr. Moody and all other non-exempt employees to experience actions illegal under the California Labor Code, including the following:

Minimum Wage and Overtime Violations

Vision failed to provide all compensation, including minimum wage and overtime compensation, as well as compensation for work performed inside of Meal and Rest Periods, to its employees in violation of, *inter alia*, Labor Code sections 1194, 510, IWC Wage Order 16, and any other applicable wage orders. This illegal action is due, in part, to Vision's policies of (1) failing to properly retain accurate Time Records, in violation of California law, and (2) failing to provide compensation (including both minimum and overtime compensation) for all time worked by the employees, or in control of the employer. For instance, Vision would instruct Mr. Moody to report scheduled (as opposed to *actual*) work hours, resulting in a loss of compensation. On occasion the electronic timekeeping application Mr. Moody was instructed to use to log his hours would malfunction, resulting in inaccuracies of time worked. Additionally, Vision would often require Mr. Moody to work extended hours (beyond scheduled hours), without compensation. Further, Vision would regularly contact Mr. Moody outside of normal work hours (*i.e.*, "after hours" or during lunch) without compensation.

Additionally, among other issues, Vision has notice of Mr. Moody, and others, working outside of their scheduled and/or reported hours, as well as *within* Meal and Rest Periods, but fails to provide any compensation for this work-time. Mr. Moody was frequently scheduled to be "On Call" outside of when his work shifts ended, but was never compensated for this time. On a few occasions he was instructed to complete work related tasks before he had clocked in for his shift including unloading boxes and freeing a stuck trailer. Further, Vision failed to properly calculate and pay overtime at the actual overtime rate of pay, as Vision ignores certain compensation when calculating the Regular Rate of Pay

Failure to Provide Compliant Meal Periods

Vision failed to provide compliant Meal Periods or requisite Meal Period penalty payments, in violation of, *inter alia*, Labor Code sections 226.7, 512, and IWC Wage Order 16, or any other applicable wage orders. For example, Vision does not possess a legal Meal Period policy and makes no attempt to ensure that its employees are either timely or wholly provided Meal Periods. The employees would often either miss a Meal Period entirely, or be provided a short or untimely Meal Period. Whether or not an employee was provided a Meal Period was often contingent upon the how busy or understaffed the employees were on a given day. Mr. Moody was frequently interrupted during his Meal Periods by supervisors and/or foreman to discuss work related matters.

Vision would pressure its employees to either skip, or cut short, a Meal Period as employees were expected to respond to clients and supervisors at all times. Vision has never provided a compliant Meal Period penalty payment to any employee as to the above referenced issues. Finally, on the rare occasions when employees *were* paid Meal Period penalties (*i.e.* California Meal Period Premiums), such payments do not “cure” the stated Labor Code violation under section 226.7. The California Supreme Court held that “An employer’s failure to provide an additional hour of pay does not form part of a section 226.7 violation, and an employer’s provision of an additional hour of pay does not excuse a section 226.7 violation. The failure to provide required meal and rest breaks is what triggers a violation of section 226.7.” (*Kirby v. Inmoos Fire Protection, Inc.* (2012) 53 Cal.4th 1244, 1256, *italics added.*). Even more recently, a 2020 California Supreme Court ruling stated that, “The remedy for a Labor Code violation, through settlement or other means, is distinct from the fact of the violation itself. For example, employers can pay an additional hour of wages as a remedy for failing to provide meal and rest breaks. (§ 226.7, subd. (c).) But we have held that payment of this statutory remedy ‘does not excuse a section 226.7 violation.’” *Kim v. Reins International California, Inc.*, (2020) 9 Cal.5th 73. To be clear, payment of a Meal Period penalty to employees does not rectify the violation, it is in fact an admission of a Labor Code violation. Finally, Vision failed to pay Meal Period Premiums at the proper rate, as Vision fails to either (1) pay a full hours worth of pay, or (2) properly calculate the regular rate of pay for purposes of determining the premium rate owed. *Ferra v. Loews Hollywood Hotel, LLC*, (2021) 11 Cal.5th 858.

Vision required its employees to constantly monitor their cell phones and be “on-call” at all times, specifically during Meal Periods. On occasion, Vision would interrupt, or cut short, its employees’ Meal Periods and require them to return to work. Vision was frequently understaffed, this would result in Mr. Moody being required to respond to clients and supervisors about work related matters during his Meal Periods.

Vision illegally retained control over its employees during Meal Periods. For example, Vision required its employees to remain “On Call” (*i.e.* monitor their phones) at all times, including during Meal Periods.

Failure to Provide Compliant Rest Periods

Vision failed to provide compliant Rest Periods or requisite Rest Period penalty payments, in violation of, *inter alia*, Labor Code sections 226.7, 512, and IWC Wage Order 16, and any other applicable wage orders. For example, Vision does not possess a legal Rest Period policy, as its Rest Period policy lacks required language under California law. Vision makes no attempt to ensure that its employees are either timely or wholly provided Rest Periods. The employees would often either miss a

Rest Period entirely, be provided a short or untimely Rest Period, or be provided only one Rest Period, even when they were working in excess of 6.5 hours a day. Vision would pressure its employees to either skip, or cut short, a Rest Period as employees were expected to respond to clients and supervisors at all times. Mr. Moody often was required to work during Rest Periods in order to complete his daily duties before he ended his shift for the day. Vision has never provided a compliant Rest Period penalty payment to any employee as to the above referenced issues. Finally, on the rare occasions in which Vision would provide a Rest Period penalty, it would pay said penalty at an improper (and *lesser*) rate, due to the failure to properly calculate the Regular Rate of Pay.

- Vision required its employees to constantly monitor their cell phones and be "on-call" at all times, specifically during Rest Periods. On occasion, Vision would interrupt, or cut short, its employees' Rest Periods and require them to return to work. When Mr. Moody was able to take a Rest Period, his Rest Periods were often interrupted by supervisors and clients.

- Finally, Vision illegally retained control over its employees during Rest Periods. For example, Vision required its employees to remain "On Call" (*i.e.* monitor their phones) at all times, including during Rest Periods.

Wage Statement Violations

- Vision violated Labor Code section 226(a)(2) by failing to furnish an accurate showing of all hours worked at each hourly rate by the employee. Mr. Moody, and other employees were not compensated for all hours worked (due in part to Vision's requirement that employees list only *scheduled* work-times, not actual work-times.)

- Vision violated Labor Code section 226(a)(5) by failing to furnish an accurate showing of the net wages earned by its employees. For example, Vision (a) would not provide compensation for all hours and minutes worked, (b) would use an improper (and lesser) Overtime Rate of Pay, and (c) would fail to pay Meal and/or Rest Period penalties when due. Vision failed to properly calculate and pay overtime at the actual overtime rate of pay, as Vision ignores certain compensation (including bonuses) when calculating the Regular Rate of Pay. Further, on the rare occasions in which Vision would provide a Meal or Rest Period penalty, it would pay said penalty at an improper (and lesser) rate, due to the failure to properly calculate the Regular Rate of Pay.

- Vision violated Labor Code section 226(a)(8) by failing to provide an accurate showing of the name and address of the legal entity that is the employer. For example, the address of "Vision Mechanical, Inc." is listed on Mr. Moody's Wage Statement as 5145 Golden Foothill Parkway, Suite 180, El Dorado Hills CA., (Sec

- **Exhibit A**), however the California Secretary of State Website shows a different Address located in Queen Creek, Arizona (See **Exhibit B**).
- Vision violated Labor Code section 226(a)(9) by failing to furnish an accurate showing of all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Mr. Moody, and the other employees were not compensated for all hours worked (due in part to Vision requiring employees to list only *scheduled* work-times, not actual work-times to include “on-call” hours). Vision does not explain how its’ system describes “time worked” on the “Earnings Statement” itself. Additionally, Vision does not use “minutes,” to describe the amount of time worked, on the “Earnings Statement. As an example, for the pay period ending January 15, 2023, Vision states that it paid Mr. Moody for “25.83” total hours of “Regular Pay”. (Please see **Exhibit A**). However, Mr. Moody cannot “readily ascertain” what 35.83 means without “reference to other documents or information.” Additionally, Vision does not use “minutes,” to describe the amount of time worked, on the “Earnings Statement.” As an example, .83 is not an accurate representation of minutes worked, but an altered representation of those minutes. (i.e., 25 minutes of work could be represented as .25, and 50 minutes of work could be represented as .50, however .83 minutes of work cannot be represented as .83 as there are not 83 minutes within one hour.) This is because Vision is apparently using a time-calculating system other than “minutes,” but without explanation to the employees within the wage statement. As minutes are measured on a scale of 1 through 60, it is not apparent what these figures are meant to represent. Without an explanation for how these figures were arrived at, employees cannot “readily ascertain” their total hours worked. Therefore, Vision failed to provide an accurate showing of the “total hours worked” by its employees pursuant to section 226(a)(2), due to all the aforesaid reasons.

Failure to Provide Compliant Expense Reimbursement Payments

- Vision failed to provide compliant expense reimbursement payments in violation of, *inter alia*, Labor Code section 2802, by failing to provide payments for expenses incurred by Mr. Moody, and other non-exempt employees, including expenses for cell-phone costs, necessary work supplies, and mileage. Mr. Moody was required to purchase tools and safety boots, he did not receive compensation for these purchases.

Willful Failure to Provide All Compensation to Ex-Employees

- Vision failed to provide all compensation upon termination of employment in violation of Labor Code sections 201-203, due, in part, to the fact that Vision failed to provide proper compensation for all hours worked, and failed to pay full Meal or Rest Period penalties, as discussed above.

To confirm, Vision is a "person" as defined within California Labor Code section 18.

Again, thank you for your assistance and instruction throughout this matter. Should you have any questions or comments, please do not hesitate to contact the undersigned.

Very Truly Yours,



Eric K. Yaeckel, Esq.

cc: Via Certified U.S. Mail

ROB SIGRIST

Agent for Service of Process for
VISION MECHANICAL, INC.
2508 Halfmoon Court
Lincoln, CA 95648

Exhibit A

Vision Mechanical, Inc.
5145 Golden Foothill Parkway, Suite 180
El Dorado Hills CA 95762

Pay Stub Detail
PAY DATE: 01/13/2023
NET PAY: \$846.71

*Michael Moody
2416 moraine circle #23
Rancho cordova CA 95670

EMPLOYER
Vision Mechanical, Inc.
5145 Golden Foothill Parkway, Suite 180
El Dorado Hills CA 95762

PAY PERIOD
Period Beginning 01/09/2023
Period Ending: 01/15/2023
Pay Date: 01/13/2023
Total Hours: 33.83

EMPLOYEE
*Michael Moody
2416 moraine circle #23
Rancho cordova CA 95670

SS#: ...2306

BENEFITS	Accrued	Used	Available	NET PAY:	
Sick	0.46	0.00	-3.85		\$846.71

MEMO:

PAY	Hours	Rate	Current	YTD	DEDUCTIONS	Current	YTD
Regular Pay	25.83	30.00	774.90	1,699.80			
Holiday Pay	8.00	30.00	240.00	480.00			

TAXES	Current	YTD
Federal Income Tax	67.75	153.50
Social Security	62.93	135.15
Medicare	14.72	31.61
CA Income Tax	13.65	31.57
CA State Disability Ins	9.14	19.62

SUMMARY	Current	YTD
Total Pay	\$1,014.90	\$2,179.80
Taxes	\$168.19	\$371.45
Deductions	\$0.00	\$0.00

Net Pay **\$846.71**

Exhibit B

Vision Mechanical, Inc. (2673444)

Business Search

The California Business Search provides access to available information for **corporations, limited liability companies and limited partnerships** of record with the California Secretary of State, with **free PDF copies** of over 17 million imaged business entity documents, including the most recent Imaged Statements of Information filed for Corporations and Limited Liability Companies.

Currently, information for Limited Liability Partnerships (e.g. law firms, architecture firms, engineering firms, public accountancy firms, and land survey firms), General Partnerships, and other entity types are **not contained** in the California Business Search. If you wish to obtain information about LLPs and GPs, submit a Business Entities Order paper form to request copies of filings for these entity types. Note: This search is not intended to serve as a name reservation search. To reserve an entity name, select Forms on the left panel and select Entity Name Reservation ? Corporation, LLC, LP.

Basic Search

A Basic search can be performed using an entity name or entity number. When conducting a search by an entity number, where applicable, **remove "C"** from the entity number. Note, a **basic search** will search **only ACTIVE entities** (Corporations, Limited Liability Companies, Limited Partnerships, Cooperatives, Name Reservations, Foreign Name Reservations, Unincorporated Common Interest Developments, and Out of State Associations). The basic search performs a contains ?keyword? search. The Advanced search allows for a ?starts with? filter. To search entities that have a status other than active or to refine search criteria, use the **Advanced** search feature.

Advanced Search

[Skip to main content](#) State



Request Certificate

Initial Filing Date	09/09/2004
Status	Active
Standing - SOS	Good
Standing - FIB	Good
Standing - Agent	Good
Standing - VC/CF	Good
Formed In	IDAHO
Entity Type	Stock Corporation - CA - General
Principal Address	24628 S. 196TH PL. QUEEN CREEK, AZ 85142
Mailing Address	24628 S. 196TH PL. QUEEN CREEK, AZ 85142
Statement of Info Due Date	06/30/2024
Agent	Individual Rob Sigrist 2508 HALFMOON COURT LINCOLN, CA 95648

View History

Request Access

Exhibit 2

SULLIVAN & YAECKEL
LAW GROUP
A PROFESSIONAL CORPORATION

2330 THIRD AVENUE
SAN DIEGO, CALIFORNIA 92101

PHONE 619-702-6760
FACSIMILE 619-702-6761

April 20, 2023

Labor and Workforce Development Agency
Attn. PAGA Administrator

Submitted Via Online Filing

Re: Michael Moody v. Ward Mechanical, Inc.
Our File No.: 7350

Dear Administrator:

Please allow this correspondence to serve as "written notice," as required by California Labor Code section 2699.3(a)(1), of the specific proWards of the California Labor Code believed to have been violated by Ward Mechanical, Inc., (hereinafter "Ward"), in the above referenced matter. This "written notice" is filed on behalf of Mr. Moody, and all current and former non-exempt employees employed by Ward. Thank you for your assistance and instruction on this issue.

The specific provisions alleged to have been violated by Ward are as follows:

CALIFORNIA LABOR CODE SECTIONS 201-203, 226, 226(a), 226.7, 510, 512, 1194, 1197.1, 1198.5 and 2802, as well as IWC Wage Order 16, and any other applicable wage orders, codified as Title 8, California Code of Regulations, section 11160 *et seq.*

Facts and theories supporting the allegations: Mr. Moody has been employed as a non-exempt employee for Ward from approximately August, 2022, through January 28, 2023.

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Throughout the term of Mr. Moody's employment, Ward required Mr. Moody and all other non-exempt employees to experience actions illegal under the California Labor Code, including the following:

Minimum Wage and Overtime Violations

Ward failed to provide all compensation, including minimum wage and overtime compensation, as well as compensation for work performed inside of Meal and Rest Periods, to its employees in violation of, *inter alia*, Labor Code sections 1194, 510, IWC Wage Order 16, and any other applicable wage orders. This illegal action is due, in part, to Ward's policies of (1) failing to properly retain accurate Time Records, in violation of California law, and (2) failing to provide compensation (including both minimum and overtime compensation) for all time worked by the employees, or in control of the employer. For instance, Ward would instruct Mr. Moody to report scheduled (as opposed to *actual*) work hours, resulting in a loss of compensation. On occasion the electronic timekeeping application Mr. Moody was instructed to use to log his hours would malfunction, resulting in inaccuracies of time worked. Additionally, Ward would often require Mr. Moody to work extended hours (beyond scheduled hours), without compensation. Further, Ward would regularly contact Mr. Moody outside of normal work hours (*i.e.*, "after hours" or during lunch) without compensation.

Additionally, among other issues, Ward has notice of Mr. Moody, and others, working outside of their scheduled and/or reported hours, as well as *within* Meal and Rest Periods, but fails to provide any compensation for this work-time. Mr. Moody was frequently scheduled to be "On Call" outside of when his work shifts ended, but was never compensated for this time. On a few occasions he was instructed to complete work related tasks before he had clocked in for his shift including unloading boxes and freeing a stuck trailer. Further, Ward failed to properly calculate and pay overtime at the actual overtime rate of pay, as Ward ignores certain compensation when calculating the Regular Rate of Pay

Failure to Provide Compliant Meal Periods

Ward failed to provide compliant Meal Periods or requisite Meal Period penalty payments, in violation of, *inter alia*, Labor Code sections 226.7, 512, and IWC Wage Order 16, or any other applicable wage orders. For example, Ward does not possess a legal Meal Period policy and makes no attempt to ensure that its employees are either timely or wholly provided Meal Periods. The employees would often either miss a Meal Period entirely, or be provided a short or untimely Meal Period. Whether or not an employee was provided a Meal Period was often contingent upon the how busy or understaffed the employees were on a given day. Mr. Moody was frequently interrupted during his Meal Periods by supervisors and/or foreman to discuss work related matters.

Ward would pressure its employees to either skip, or cut short, a Meal Period as employees were expected to respond to clients and supervisors at all times. Ward has never provided a compliant Meal Period penalty payment to any employee as to the above referenced issues. Finally, on the rare occasions when employees were paid Meal Period penalties (*i.e.* California Meal Period Premiums), such payments do not “cure” the stated Labor Code violation under section 226.7. The California Supreme Court held that “An employer’s failure to provide an additional hour of pay does not form part of a section 226.7 violation, and an employer’s pro Ward of an additional hour of pay does not excuse a section 226.7 violation. The failure to provide required meal and rest breaks is what triggers a violation of section 226.7.” (*Kirby v. Inmoos Fire Protection, Inc.* (2012) 53 Cal.4th 1244, 1256, italics added.). Even more recently, a 2020 California Supreme Court ruling stated that, “The remedy for a Labor Code violation, through settlement or other means, is distinct from the fact of the violation itself. For example, employers can pay an additional hour of wages as a remedy for failing to provide meal and rest breaks. (§ 226.7, subd. (c).) But we have held that payment of this statutory remedy ‘does not excuse a section 226.7 violation.’” *Kim v. Reins International California, Inc.*, (2020) 9 Cal.5th 73. To be clear, payment of a Meal Period penalty to employees does not rectify the violation, it is in fact an admission of a Labor Code violation. Finally, Ward failed to pay Meal Period Premiums at the proper rate, as Ward fails to either (1) pay a full hours worth of pay, or (2) properly calculate the regular rate of pay for purposes of determining the premium rate owed. *Ferra v. Loews Hollywood Hotel, LLC*, (2021) 11 Cal.5th 858.

Ward required its employees to constantly monitor their cell phones and be “on-call” at all times, specifically during Meal Periods. On occasion, Ward would interrupt, or cut short, its employees’ Meal Periods and require them to return to work. Ward was frequently understaffed, this would result in Mr. Moody being required to respond to clients and supervisors about work related matters during his Meal Periods.

Ward illegally retained control over its employees during Meal Periods. For example, Ward required its employees to remain “On Call” (*i.e.* monitor their phones) at all times, including during Meal Periods.

Failure to Provide Compliant Rest Periods

Ward failed to provide compliant Rest Periods or requisite Rest Period penalty payments, in violation of, *inter alia*, Labor Code sections 226.7, 512, and IWC Wage Order 16, and any other applicable wage orders. For example, Ward does not possess a legal Rest Period policy, as its Rest Period policy lacks required language under California law. Ward makes no attempt to ensure that its employees are either timely or wholly provided Rest Periods. The employees would often either miss a Rest Period entirely, be provided a short or untimely Rest Period, or be provided only one

Rest Period, even when they were working in excess of 6:5 hours a day. Ward would pressure its employees to either skip, or cut short, a Rest Period as employees were expected to respond to clients and supervisors at all times. Mr. Moody often was required to work during Rest Periods in order to complete his daily duties before he ended his shift for the day. Ward has never provided a compliant Rest Period penalty payment to any employee as to the above referenced issues. Finally, on the rare occasions in which Ward would provide a Rest Period penalty, it would pay said penalty at an improper (and *lesser*) rate, due to the failure to properly calculate the Regular Rate of Pay.

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Finally, Ward illegally retained control over its employees during Rest Periods. For example, Ward required its employees to remain "On Call" (*i.e.* monitor their phones) at all times, including during Rest Periods.

Wage Statement Violations

Ward violated Labor Code section 226(a)(2) by failing to furnish an accurate showing of all hours worked at each hourly rate by the employee. Mr. Moody, and other employees were not compensated for all hours worked (due in part to Ward's requirement that employees list only *scheduled* work-times, not actual work-times.)

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To confirm, Ward is a "person" as defined within California Labor Code section 18.

Again, thank you for your assistance and instruction throughout this matter. Should you have any questions or comments, please do not hesitate to contact the undersigned.

Very Truly Yours,


Eric K. Yaeckel, Esq.

cc: *Via Certified U.S. Mail*

HUMAN RESOURCES DIRECTOR
WARD MECHANICAL INC.
564 DADI Ct.
El Dorado Hills, CA 95762

Exhibit A

Vision Mechanical, Inc.
5145 Golden Foothill Parkway, Suite 180
El Dorado Hills CA 95762

Pay Stub Detail
PAY DATE: 01/13/2023
NET PAY: \$846.71

*Michael Moody
2416 moraine circle #23
Rancho cordova CA 95670

EMPLOYER
Vision Mechanical, Inc.
5145 Golden Foothill Parkway, Suite 180
El Dorado Hills CA 95762

PAY PERIOD
Period Beginning: 01/09/2023
Period Ending: 01/15/2023
Pay Date: 01/13/2023
Total Hours: 33.83

EMPLOYEE
*Michael Moody
2416 moraine circle #23
Rancho cordova CA 95670

SS#: ...2306

BENEFITS	Accrued	Used	Available	
Sick	0.46	0.00	-3.85	NET PAY: \$846.71

MEMO:

PAY	Hours	Rate	Current	YTD	DEDUCTIONS	Current	YTD
Regular Pay	25.83	30.00	774.90	1,699.80			
Holiday Pay	8.00	30.00	240.00	480.00			

TAXES	Current	YTD
Federal Income Tax	67.75	153.50
Social Security	62.93	135.15
Medicare	14.72	31.61
CA Income Tax	13.65	31.57
CA State Disability Ins	9.14	19.62

SUMMARY	Current	YTD
Total Pay	\$1,014.90	\$2,179.80
Taxes	\$168.19	\$371.45
Deductions	\$0.00	\$0.00

Net Pay \$846.71