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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

RATHY SY, in his representative capacity, on behalf of the State of California, the general public and all aggrieved employees of Defendants, Plaintiff. v. PACIFIC RIM MECHANICAL CONTRACTORS, INC., a California corporation; and DOES 1 through 50 inclusive, Defendants.	Case No.: 37-2023-00043406-CU-OE-CTL Civil Unlimited Amount Demanded Exceeds $25,000.00 **REPRESENTATIVE ACTION FOR CIVIL PENALTIES PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT OF 2004 (Labor Code §§ 2698 *et seq.*)** 1. Labor Code Private Attorneys General Act Representative Claims

Plaintiff Rathy Sy ("Plaintiff") brings this representative enforcement action in his representative capacity against Defendant Pacific Rim Mechanical Contractors, Inc. ("Pacific Rim") and DOES 1 through 50, inclusive (collectively, "Defendants"), on the following grounds:

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INTRODUCTION

1. Plaintiff brings this representative enforcement action under the Private Attorneys General Act of 2004 (codified in California Labor Code §§ 2698 *et seq.*, "PAGA") on behalf of himself and all other current and former non-exempt employees who performed work for Defendants in California during the time period commencing on the date that is one (1) year and sixty-five (65) days prior to the filing of this Complaint through and including the date that trial concludes (referred to herein as "Aggrieved Employees").

2. Plaintiff alleges that during the relevant time period Pacific Rim engaged in a common pattern and practice of wage and hour violations under the California Labor Code ("Labor Code") and the Industrial Welfare Commission ("IWC") Wage Orders by, among other things:

a. Failing to provide meal periods and/or pay premium wages;

b. Failing to authorize and permit rest periods and/or pay premium wages;

c. Failing to timely pay all minimum, regular, and/or overtime wages;

d. Failing to reimburse for business expenses;

e. Failing to timely pay all wages due and owing upon separation of employment and/or the required waiting time penalties;

f. Failing to furnish accurate itemized wage statements;

g. Failing to maintain accurate employment records; and

h. Retaliating against Plaintiff for requesting and/or taking protected leave and for reporting a violation of the California Family Rights Act.

3. By and through this representative action, Plaintiff seeks to recover all available remedies including, but not limited to, civil penalties, reasonable attorneys' fees, and litigation costs on behalf of himself and all other Aggrieved Employees, the general public, and the state of California.

4. All allegations in this Complaint are based upon information and belief except those allegations specifically pertaining to Plaintiff and/or his counsel, which are based upon personal

knowledge. Each allegation in this Complaint has evidentiary support and/or is likely to have evidentiary support after reasonable opportunity for further investigation and formal discovery.

JURISDICTION AND VENUE

5. This Court has jurisdiction over this action pursuant to California Code of Civil Procedure ("Code of Civil Procedure") § 410.10 and Labor Code §§ 2698 *et seq*. Pursuant to Labor Code §§ 2698 *et seq*., Plaintiff brings this action, in his representative capacity, on behalf of himself and all other Aggrieved Employees, as defined herein.

6. This Court has personal jurisdiction over Pacific Rim because Pacific Rim is a California corporation, has its principal place of business in San Diego, California, conducts business in the state of California, and has caused injuries in the county of San Diego through its acts, omissions, and violations of the Labor Code and relevant IWC Wage Order, as alleged herein.

7. Venue in this judicial district is proper pursuant to Code of Civil Procedure §§ 395(a) and 395.5 because each defendant, including each fictitiously named defendant, transacts business in the county of San Diego and is otherwise within this Court's jurisdiction for purposes of service of process. The unlawful acts alleged herein have a direct effect on Plaintiff and all other Aggrieved Employees within the county of San Diego and throughout the state of California.

THE PARTIES

I. PLAINTIFF

8. Plaintiff Rathy Sy ("Plaintiff") at all material times mentioned herein:

a. Was and is a resident of San Diego County, California;

b. Was employed by Pacific Rim from approximately September 2020 to May 10, 2023, as a sheet metal journeyman;

c. Was classified by Pacific Rim as a non-exempt employee for purposes of the Labor Code and applicable IWC Wage Order;

d. Earned an hourly wage;

e. Was to be paid on a weekly basis;

f. Typically worked five days and 40 hours per week, with occasional overtime;

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g. Was typically scheduled to begin work between 5:00 a.m. and 7:00 a.m. and ended his shifts between 1:00 p.m. and 3:00 p.m.;

h. Was not provided with the opportunity to take legally compliant meal periods and/or paid any meal period premium wages owed to him;

i. Was not authorized and permitted to take legally compliant rest periods and/or paid any rest period premium wages owed to him;

j. Was not compensated all minimum, regular, and/or overtime wages for all time worked or spent under the control of Pacific Rim;

k. Was not reimbursed for all necessary business expenses he incurred in the discharge of his job duties, including costs incurred while using his personal vehicle to drive to worksites while on the clock;

l. Was not timely paid all wages due and owing upon separation of employment;

m. Was not paid the required waiting time penalties for late payment of final wages;

n. Was not furnished with accurate itemized wage statements;

o. Contends his employment records, including time and payroll records, were not accurately maintained by Pacific Rim;

p. Was retaliated against by Pacific Rim for requesting and/or taking protected leave and for reporting a violation of the California Family Rights Act;

q. Is an "aggrieved employee" within the meaning of Labor Code § 2699(c); and

r. Has complied with all requirements outlined in Labor Code §§ 2698 *et seq*.

II. DEFENDANT

9. Defendant Pacific Rim Mechanical Contractors, Inc. is a California corporation with its principal place of business located in San Diego, California. Pacific Rim is a mechanical contractor that provides maintenance services, repair and replace services, emergency services, and energy controls and automation for various construction projects across Southern California.

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10. The true names and capacities, whether individual, corporate, subsidiary, partnership, associate, or otherwise of defendant Does 1 through 50, inclusive, are unknown to Plaintiff, who therefore sues these defendants by such fictitious names pursuant to Code of Civil Procedure § 474. Plaintiff will amend this Complaint, setting forth the true names and capacities of these fictitiously named defendants when their true names are ascertained. Plaintiff is informed and believes, and on that basis alleges, that each of the fictitious defendants have participated in the acts and/or omissions alleged in this Complaint.

11. At all times mentioned herein, the acts alleged to have been done and/or caused by each named defendant is also alleged to have been done and/or caused by each of the fictitiously named defendants, and by each of their agents and/or employees who acted within the scope of their agency and/or employment.

12. At all times mentioned herein, each defendant, including each fictitiously named defendant, is believed to have acted individually or as an officer, agent, or employee of the other defendants.

13. At all times mentioned herein, each defendant, including each fictitiously named defendant, acted as an agent, servant, employee, co-conspirator, alter-ego and/or joint venture of each of the other defendants, and in doing the things alleged herein acted within the course and scope of such agency, employment, alter-ego and/or in furtherance of the joint venture.

14. At all times mentioned herein, the acts and/or omissions of each of the defendants, including each fictitiously named defendant, concurrently contributed to the various acts and/or omissions of each and every one of the other defendants, including each fictitiously named defendant, in proximately causing the wrongful conduct, harm, and/or damages alleged herein. Each of the defendants, including each fictitiously named defendant, approved of, condoned, and/or otherwise ratified each and every one of the acts and/or omissions complained herein. Each defendant, including each fictitiously named defendant, was and is acting with authority of each and every other defendant and/or are acting as agents of each and every other defendant or Doe defendant.

15. At all times mentioned herein there was a unity of interest and ownership between

each defendant, including each fictitiously named defendant, such that all defendants acted as a single employer of Plaintiff and all other Aggrieved Employees.

16. At all times mentioned herein, each defendant, including each fictitiously named defendant, exercised supervision and control over the wages, hours, and/or working conditions of Plaintiff and all other Aggrieved Employees, including, but not limited to, implementing standard policies and procedures.

17. At all times mentioned herein, each defendant, including each fictitiously named defendant, caused Aggrieved Employees, including Plaintiff, to work and/or prevented Plaintiff and other Aggrieved Employees from working.

18. At all times mentioned herein, each defendant, including each fictitiously named defendant, had control over Aggrieved Employees.

19. Each defendant, including each fictitiously named defendant, is alleged to have caused each of the violations alleged herein.

20. Each defendant, including each fictitiously named defendant, is jointly and severally liable for each of the violations alleged herein.

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FACTUAL ALLEGATIONS

21. Plaintiff realleges and incorporates by reference, as though fully set forth herein, all paragraphs of this Complaint.

22. Plaintiff was employed by, or otherwise performed work for, Pacific Rim from approximately September 2020 to May 10, 2023, as a sheet metal journeyman in San Diego, California. Plaintiff's job duties included, but were not limited to, fabricating, installing, and assembling products and systems made from sheet metal. He was also responsible for unloading deliveries of ductwork, sheet metal, and other materials while on-site. Plaintiff frequently travelled between multiple job sites during his shifts.

23. At all relevant times, Plaintiff was classified as a non-exempt employee, earned an hourly wage, and was paid on a weekly basis. At the beginning of his employment, Plaintiff was paid $34 per hour, which was increased to $38 per hour after his first annual review. Plaintiff typically worked five days and 40 hours per week. His shifts were scheduled to begin from 5:00

a.m. to 7:00 a.m. and end between 1:00 p.m. to 3:00 p.m. Plaintiff also occasionally worked overtime hours.

24. Pacific Rim has employed, and will continue to employ, several individuals in a non-exempt capacity in San Diego County and throughout the state of California.

25. Throughout the relevant time period, all Aggrieved Employees earned an hourly wage, were to be paid on a weekly basis, and worked at least eight (8) hours per day and/or forty (40) hours per week.

26. Plaintiff and all other Aggrieved Employees were subject to, and those currently employed continue to be subject to, the same and/or similar policies, practices, procedures, guidelines, and/or culture described herein.

27. Plaintiff further alleges that he and all other Aggrieved Employees have suffered, and will continue to suffer, the same and/or similar violations of law described herein.

28. During the relevant time period, Pacific Rim did not, and does not, have a policy, practice, procedure, guideline, and/or culture of providing all Aggrieved Employees with the opportunity to take an uninterrupted, thirty (30) minute off-duty meal period before the end of their fifth (5^{th}) and/or tenth (10^{th}) hour of work when they worked five (5) and/or ten (10) or more hours in a day.

29. Plaintiff and other Aggrieved Employees typically worked over six (6) hours in a workday. However, Plaintiff and other Aggrieved Employees were not provided with the opportunity to take lawful meal periods because Pacific Rim regularly directed, pressured, compelled and/or otherwise coerced Plaintiff and other Aggrieved Employees to work during their meal periods, take meal periods that were less than thirty minutes, and/or take meal periods after the end of their fifth hour of work. For instance, Plaintiff and other Aggrieved Employees were required to unload deliveries of ductwork, sheet metal, and other materials during their meal periods because the deliveries often arrived during the time that their meal periods were scheduled. Due to limited space at the worksites for delivery trucks, Plaintiff and other Aggrieved Employees were instructed by their foreman to prioritize unloading these deliveries over taking lawful meal periods. Further, Plaintiff's and other Aggrieved Employees' meal periods were sometimes

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shortened by several minutes because their foreman did not permit the employees to climb down from the roof and leave the work area prior to the start of their meal period. Consequently, Plaintiff and other Aggrieved Employees were frequently required to work during their meal periods and/or received shortened meal periods.

30. Pacific Rim knew or should have known that Plaintiff and other Aggrieved Employees were not provided with the opportunity to take legally compliant meal periods because Pacific Rim instructed Plaintiff and other Aggrieved Employees to prioritize work duties such as unloading deliveries over taking legally compliant meal periods and/or to continue working after the start of their meal periods. Plaintiff further alleges that he informed his supervisor that he was unable to take compliant meal periods.

31. Pacific Rim did not, and does not, have a policy, practice, procedure, guideline, and/or culture of paying meal period premiums to Plaintiff and other Aggrieved Employees at their regular rate of pay for all meal periods that do not comply with California law. For instance, Plaintiff was not paid any meal period premiums for the shifts in which he received a non-compliant meal period.

32. Pacific Rim did not, and does not, have a policy, practice, procedure, guideline, and/or culture of authorizing and permitting Plaintiff and other Aggrieved Employees to take uninterrupted, off-duty rest periods of at least ten (10) minutes for every four (4) hours worked or major fraction thereof.

33. Plaintiff and other Aggrieved Employees were not authorized or permitted to take compliant rest periods because they were regularly directed, compelled, and/or otherwise coerced by Pacific Rim to finish their assigned projects, unload deliveries, and perform other work duties during their rest periods. For instance, Plaintiff worked through at least one of his rest periods for the majority of his shifts because he typically was only permitted by his foreman to take one rest period for the entirety of his shifts.

34. Plaintiff alleges that Pacific Rim knew or should have known that Plaintiff and other Aggrieved Employees were not authorized and permitted to take legally compliant rest periods because Pacific Rim directed, pressured, and/or otherwise coerced Aggrieved Employees,

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including Plaintiff, to work through their rest periods and assigned workloads that precluded Plaintiff and other Aggrieved Employees from taking lawful rest periods.

35. Plaintiff contends that although he and other Aggrieved Employees were not provided with legally compliant rest periods, he and all other Aggrieved Employees were not compensated rest period premium wages at their regular rate of pay for all non-compliant rest periods, as required by California law.

36. Pacific Rim had, and continues to have, a policy, practice, procedure, guideline, and/or culture of not paying Aggrieved Employees all minimum, regular, and/or overtime wages for all time engaged in work on behalf of Pacific Rim.

37. Plaintiff and other Aggrieved Employees were not paid at least minimum wages for all hours worked or spent under the control of Pacific Rim. For instance, Plaintiff and other Aggrieved Employees were mandated by Pacific Rim to perform work duties during their meal periods, but Pacific Rim did not consider this time as compensable and failed to provide any remuneration. This is because the time entries for Plaintiff's and, on information and belief, other Aggrieved Employees' meal periods were prepopulated on their timesheets, and Pacific Rim did not allow the employees to notate that they had worked during their meal periods. Additionally, Plaintiff and, on information and belief, other Aggrieved Employees were often required to travel between different worksites during their shifts, spending up to twenty minutes doing so, but they were not permitted to record this time as hours worked. Thus, Plaintiff and other Aggrieved Employees were not compensated at least minimum wages for the time spent driving between different worksites.

38. Pacific Rim's failure to pay Plaintiff and other Aggrieved Employees for all time they were suffered or permitted to work resulted in the unlawful withholding of wages and/or overtime for time actually worked. Therefore, Pacific Rim failed to timely pay Plaintiff and other Aggrieved Employees all minimum, regular, and/or overtime wages owed to them when Plaintiff and other Aggrieved Employees worked in excess of eight (8) hours in a workday and/or forty (40) hours in a workweek.

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39. Pacific Rim had, and continues to have, a policy, practice, procedure, guideline, and/or culture of failing to reimburse Aggrieved Employees, including Plaintiff, for all necessary business expenses that were incurred in the discharge of their job duties. For example, Plaintiff and, on information and belief, other Aggrieved Employees were required to use their personal vehicles to travel to and from various worksites during their shifts but were not compensated mileage or other expenses associated with using their personal vehicles for work purposes.

40. Plaintiff alleges that Pacific Rim had, and continues to have, a policy, practice, procedure, guideline, and/or culture of willfully failing to pay former Aggrieved Employees, such as himself, all wages due and owing upon separation of employment and/or the required waiting time penalties for the late payment of such wages. Plaintiff asserts that he and other former Aggrieved Employees were not timely paid all minimum, regular, and/or overtime wages due and owing upon separation of employment because he and other former Aggrieved Employees were not compensated for the time they spent performing work during meal periods and/or traveling to different worksites. Plaintiff and other former Aggrieved Employees were also not timely paid premium wages owed for unlawful meal and rest periods upon separation of employment.

41. Plaintiff further alleges that Pacific Rim has a policy, practice, procedure, guideline, and/or culture of failing to pay the appropriate waiting time penalties to former Aggrieved Employees, such as himself, as provided under California law.

42. Pacific Rim had, and continues to have, a policy, practice, procedure, guideline, and/or culture of furnishing wage statements to Plaintiff and other Aggrieved Employees that do not accurately reflect the items required by Labor Code § 226(a), including but not limited to, all applicable hourly rates in effect during the pay period, the corresponding number of hours worked at each hourly rate by the employee, the actual gross wages earned, and the actual net wages earned. For example, the wage statements furnished by Pacific Rim did not properly reflect the total hours of compensable time worked by Aggrieved Employees, such as time spent working while clocked out during meal periods, or meal and rest premium wages owed.

43. Due to the missing and/or incorrect information on the furnished wage statements, Plaintiff and other Aggrieved Employees were unable to promptly and easily determine the total

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number of hours actually worked, the amount of wages actually earned, the applicable hourly rates in effect during the pay period, and/or the corresponding number of hours worked at each hourly rate, among other things.

44. Plaintiff contends that Pacific Rim had, and continues to have, a policy, practice, procedure, guideline, and/or culture of knowingly and intentionally failing to maintain accurate records for Aggrieved Employees, including Plaintiff. As a direct result of Pacific Rim's illegal policies and practices, such as those described herein, Pacific Rim failed to record Aggrieved Employees' actual time worked, the proper beginning and end of each meal period, and actual wages earned and paid, among other things, in violation of California law. For example, Plaintiff's timesheets did not accurately reflect when Plaintiff actually took his meal periods, or the time spent driving between different job sites during his shifts.

45. Plaintiff contends that Pacific Rim retaliated against him and wrongfully terminated him for requesting and/or taking protected leave under the California Family Rights Act ("CFRA") and for reporting a violation of CFRA. Specifically, in March of 2023, Plaintiff requested to take protected leave under CFRA in order to care for his wife, who was seriously ill and admitted to the hospital with a diagnosis of pneumonia. Plaintiff initially requested four weeks of leave, but requested a four-week extension when his wife's condition did not improve. Approximately one week before Plaintiff was scheduled to return to work, Pacific Rim notified him that he had been terminated. At the time, Plaintiff disclosed to Pacific Rim that he believed the termination was improper because he was on CFRA leave. Pacific Rim acknowledged that Plaintiff was on protected leave but confirmed the termination was final. On information and belief, Plaintiff contends that he was terminated because he requested and/or took protected leave under CFRA and for reporting a violation of CFRA.

46. On July 31, 2023, Plaintiff submitted written notice to the California Labor and Workforce Development Agency ("LWDA") and Pacific Rim as required by the PAGA, informing them of Pacific Rim's alleged violations of the Labor Code, including the facts and theories to support each violation. A true and correct copy of the July 31, 2023, written notice is attached hereto as **Exhibit 1** and is incorporated herein by reference.

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47. To date, which is more than 65 days after submission of Plaintiff's written notice, the LWDA has not provided notice of its intent to investigate Plaintiff's alleged violations of the Labor Code. Pursuant to the PAGA, Plaintiff has the right to pursue, and does so pursue, the asserted claims in a representative action in his representative capacity on behalf of himself and all other Aggrieved Employees, the general public and the state of California as permitted by Labor Code § 2699.3.

48. Plaintiff further believes that additional violations may be discovered and therefore reserves his right to allege additional violations of the law as investigation and discovery warrants. In the event Plaintiff discovers additional violations, Plaintiff will seek to amend the operative complaint as necessary.

PAGA DESIGNATION

49. Plaintiff realleges and incorporates by reference, as though fully set forth herein, all paragraphs of this Complaint.

50. By and through this representative action, Plaintiff intends to represent the following aggrieved employees:

> All current and former non-exempt employees who performed work for Defendants in California during the period commencing one year and sixty-five days prior to the filing of this Complaint through and including the last date of trial (hereinafter the "PAGA Period") and who have suffered at least one of the violations alleged herein.

51. Plaintiff and all Aggrieved Employees are all "employees" as the term is used in the Labor Code and the IWC Wage Orders regulating wages, hours, and working conditions in the state of California.

52. A more precise definition of the aggrieved employees may be determined after further investigation and discovery. Plaintiff reserves his right to redefine the group of aggrieved employees as permitted by California law.

53. Pursuant to Labor Code § 2699, any provision of the Labor Code that provides for a civil penalty to be assessed and collected by the LWDA or any of its departments, divisions, commissions, boards, agencies or employees for violation of the code may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself

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and other current or former employees pursuant to the procedures specified in Labor Code § 2699.3. Such civil penalties are in addition to any other relief provided for under the Labor Code and must be allocated seventy-five percent (75%) to the LWDA and twenty-five percent (25%) to the aggrieved employees, pursuant to Labor Code § 2699(i).

54. During all, or a portion of, the one-year and sixty-five day period before Plaintiff filed notice of his claims with the LWDA, Pacific Rim was Plaintiff's and all other Aggrieved Employees' employer or person acting on behalf of Aggrieved Employees' employer, either individually or as an officer, agent, or employee of another person, within the meaning of Labor Code §§ 558(a) and 1197.1, who paid or caused to be paid to any employee a wage less than the minimum fixed by California state law, and as such, is subject to civil penalties for each underpaid employee, as well as liquidated damages pursuant to Labor Code § 1194.2, and any applicable penalties imposed pursuant to Labor Code § 203.

55. Plaintiff is an "aggrieved employee" under the PAGA because he was employed by the alleged violator, Pacific Rim, and experienced one or more of the alleged violations outlined herein, and therefore is properly suited to represent the interests of other Aggrieved Employees. (See *Huff v. Securitas Security Services, USA, Inc.* (2018) 23 Cal.App.5th 745, 751, 761; *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 519.)

56. Plaintiff alleges that all other Aggrieved Employees are also "aggrieved employees" under the PAGA because Pacific Rim employed them, and all Aggrieved Employees experienced one or more of the alleged violations outlined herein.

57. Pursuant to Labor Code §§ 2698 *et seq.*, Plaintiff has exhausted his administrative remedies because he complied with the notice requirements outlined in Labor Code § 2699.3. On July 31, 2023, Plaintiff submitted notice to the LWDA and Pacific Rim informing them of Pacific Rim's alleged Labor Code violations pursuant to the PAGA. (See Ex. 1.) The LWDA had sixty-five (65) days under the PAGA to provide notice of whether it intended to investigate the alleged violations. To date, the LWDA has not provided notice of its intent to investigate the alleged violations. Plaintiff thus has the right to pursue, and does so pursue, the asserted claims under the PAGA in a representative capacity pursuant to Labor Code § 2699.

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58. As set forth herein, Pacific Rim has committed, and continues to commit, numerous violations of the Labor Code and applicable IWC Wage Order, which entitles Plaintiff, in his representative capacity, to recover, on behalf of himself and all other Aggrieved Employees, the state of California, and the general public, civil penalties and attorneys' fees and costs from Pacific Rim for the alleged violations, described herein.

59. Labor Code § 2699(f) imposes a civil penalty of $100 per pay period, per employee for the initial violation, and $200 per pay period, per employee for each subsequent violation for all Labor Code provisions for which a civil penalty is not specifically provided, including, but not limited to, Labor Code §§ 98.6, 201, 202, 203, 204, 226(a), 226.7, 510, 512, 1102.5, 1174(c), 1174(d), 1194, 1197, 1197.1, 1198, and 2802. Plaintiff and other Aggrieved Employees are entitled to, and therefore seek, the civil penalties described in Labor Code § 2699(f) for the violations of law described herein.

60. Labor Code § 2699(g)(1) provides that an employee who prevails in a civil action brought pursuant to the PAGA shall be entitled to an award of reasonable attorneys' fees and costs. As such, Plaintiff, in his representative capacity on behalf of himself and all other Aggrieved Employees, is entitled to, and therefore seeks, attorneys' fees and costs.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

(By Plaintiff, in his Representative Capacity, against all Defendants)

PRIVATE ATTORNEYS GENERAL ACT OF 2004

[Labor Code §§ 2698 *et seq.*]

61. Plaintiff realleges and incorporates by reference, as though fully set forth herein, all paragraphs of this Complaint.

62. Plaintiff, in his representative capacity on behalf of himself and all other Aggrieved Employees, is entitled to and thus seeks to recover civil penalties through a representative enforcement action based on Defendants' violations of the following Labor Code and/or IWC Wage Order provisions:

a. Failing to provide legally compliant meal periods and/or pay premium wages

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for non-compliant meal periods during employment in violation of Labor Code §§ 226.7, 512, 558, and the "Meal Periods" section of the applicable IWC Wage Order;

b. Failing to authorize and permit legally compliant rest periods and/or pay premium wages for non-compliant rest periods during employment in violation of Labor Code § 226.7 and the "Rest Periods" section of the applicable IWC Wage Order;

c. Failing to timely pay all minimum, regular, and/or overtime wages during employment in violation of Labor Code §§ 204, 510, 558, 1194, 1194.2, 1197, 1197.1, 1198, and the "Minimum Wages" and "Hours and Days of Work" sections of the applicable IWC Wage Order;

d. Failing to reimburse for all necessary business expenses in violation of Labor Code § 2802;

e. Failing to timely pay all wages due and owing upon separation of employment and/or the required waiting time penalties in violation of Labor Code §§ 201-203;

f. Failing to furnish accurate itemized wage statements in violation of Labor Code §§ 226, 226.3, and the "Records" section of the applicable IWC Wage Order;

g. Failing to maintain accurate employment records in violation of Labor Code §§ 1174, 1174.5, and the "Records" section of the applicable IWC Wage Order; and

h. Retaliation in violation of Labor Code §§ 98.6 and 1102.5.

63. Labor Code § 98.6(b)(3) provides that, in addition to other remedies available, an employer who violates Labor Code § 98.6 is "liable for a civil penalty not exceeding ten thousand dollars ($10,000) per employee for each violation of this section, to be awarded to the employee who suffered the violation." Plaintiff, in his representative capacity on behalf of himself and all other Aggrieved Employees, is entitled to, and therefore seeks, the civil penalty imposed by Labor

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Code § 98.6(b)(3).

64. Labor Code § 210 provides that any person who fails to pay wages as provided in Labor Code § 204 shall be subject to a civil penalty of $100 for any initial violation for each failure to pay each employee, and for each subsequent violation or any willful or intentional violation, $200 for each failure to pay each employee, plus 25% of the amount unlawfully withheld, in addition to any other penalty. Plaintiff, in his representative capacity on behalf of himself and all other Aggrieved Employees, is entitled to, and therefore seeks, the civil penalty imposed by Labor Code § 210.

65. Labor Code § 226.3 imposes a civil penalty of $250 per employee per violation for an initial citation and $1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the records required in section 226(a), in addition to any other penalty provided by law. Plaintiff, in his representative capacity on behalf of himself and all other Aggrieved Employees, is entitled to, and therefore seeks, the civil penalty imposed by Labor Code § 226.3.

66. For violations of Labor Code §§ 510 and 512, in addition to any other recovery provided by law, Labor Code § 558 imposes a civil penalty of $50 per pay period for each underpaid employee for the initial violation and $100 per pay period for each underpaid employee for each subsequent violation of any section of Labor Code Division 2, Part 2, Chapter 1, or any provision regulating hours and days of work in any order of the IWC. Plaintiff, in his representative capacity on behalf of himself and all other Aggrieved Employees, is entitled to, and therefore seeks, the civil penalty imposed by Labor Code § 558.

67. Labor Code § 1102.5(f) provides that, in addition to other penalties, "an employer that is a corporation or limited liability company is liable for civil penalty not exceeding ten thousand dollars ($10,000) for each violation of this section." Plaintiff, in his representative capacity on behalf of himself and all other Aggrieved Employees, is entitled to, and therefore seeks, the civil penalty imposed by Labor Code § 1102.5(f).

68. Labor Code § 1174.5 imposes a civil penalty of $500 for an employer's failure to maintain accurate and complete records. This civil penalty is in addition to the civil penalty of

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$100 per pay period, per aggrieved employee that would be imposed pursuant to Labor Code § 2699 for a violation of Labor Code § 1174(d). Plaintiff, in his representative capacity on behalf of himself and all other Aggrieved Employees, is entitled to, and therefore seeks, the civil penalty imposed by Labor Code § 1174.5.

69. Labor Code § 1197.1 imposes a civil penalty of $100 for each underpaid employee for each pay period for which the employee is underpaid and a subsequent civil penalty of $250 for each underpaid employee for each pay period for which the employee is underpaid for paying or causing an employee to be paid a wage less than the minimum wage. Plaintiff, in his representative capacity on behalf of himself and all other Aggrieved Employees, is entitled to, and therefore seeks, the civil penalty imposed by Labor Code § 1197.1.

70. Labor Code § 2699(f) imposes a civil penalty of $100 per pay period, per employee for the initial violation, and $200 per pay period, per employee for each subsequent violation for all Labor Code provisions for which a civil penalty is not specifically provided, including, but not limited to, Labor Code §§ 98.6, 201, 202, 203, 204, 226(a), 226.7, 510, 512, 1102.5, 1174(c), 1174(d), 1194, 1197, 1197.1, 1198, and 2802. Plaintiff, in his representative capacity on behalf of himself and all other Aggrieved Employees, is entitled to, and therefore seeks, the civil penalty imposed by Labor Code § 2699(f).

71. Labor Code § 2699(g)(1) provides that an employee who prevails in a civil action brought pursuant to the PAGA shall be entitled to an award of reasonable attorneys' fees and costs. As such, Plaintiff, in his representative capacity on behalf of himself and all other Aggrieved Employees, is entitled to, and therefore seeks, attorneys' fees and costs.

72. Plaintiff, in his representative capacity on behalf of himself and all other Aggrieved Employees, is entitled to and seeks recovery of reasonable attorneys' fees as provided by Labor Code §§ 218.5 and 1194, and Code of Civil Procedure § 1021.5.

73. Plaintiff, in his representative capacity on behalf of himself and all other Aggrieved Employees, requests further relief as described in the below prayer for relief.

PRAYER FOR RELIEF

Plaintiff, in his representative capacity, prays for judgment against Defendants and in favor

GRAHAMHOLLIS APC
3555 FIFTH AVENUE SUITE 200
SAN DIEGO, CALIFORNIA 92103

of the state of California, Plaintiff, and all other Aggrieved Employees as follows:

a. For any and all civil penalties available for the Labor Code violations alleged herein including, but not limited to, civil penalties under Labor Code §§ 98.6, 210, 226.3, 558, 1102.5, 1174.5, 1197.1, 2699(f), and/or other applicable law;

b. For an order determining that Plaintiff is entitled to recover a civil penalty of \$100 for each aggrieved employee per pay period for the initial violation and \$200 for each aggrieved employee per pay period for each subsequent violation as provided in Labor Code § 2699(f);

c. For reasonable attorneys' fees and costs of suit to the extent permitted by law, including, but not limited to, Labor Code §§ 210, 218.5, 1194, 2699(g)(1), 2802(c), Code of Civil Procedure § 1021.5, and the "common fund" theory, the "substantial benefit" theory, the "catalyst" theory and/or other applicable law; and

d. For any and all other relief as this Court deems proper and just and is available under Labor Code §§ 2698 *et seq*.

GRAHAMHOLLIS APC
3555 FIFTH AVENUE SUITE 200
SAN DIEGO, CALIFORNIA 92103

Dated: October 5, 2023

GRAHAMHOLLIS APC

By: Allison E Schubert

Hali M. Anderson
Allison E. Schubert
Attorneys for Plaintiff Rathy Sy and All Aggrieved Employees

EXHIBIT 1

GRAHAMHOLLIS APC

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*Provisionally Licensed Lawyer

July 31, 2023

VIA ONLINE ELECTRONIC FILING

California Labor and Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Suite 801
Oakland, CA 94612

VIA CERTIFIED MAIL

Pacific Rim Mechanical Contractors, Inc.
9125 Rehco Road
San Diego, CA 92121

Pacific Rim Mechanical Contractors, Inc.,
c/o Joseph Mucher, Agent for Service of Process
9125 Rehco Road
San Diego, CA 92121

Re: Rathy Sy's Wage and Hour Claims Against Pacific Rim Mechanical Contractors, Inc.

Dear Labor and Workforce Development Agency and Pacific Rim Mechanical Contractors, Inc.:

Please be advised that Rathy Sy ("Claimant") has retained our firm to represent him for claims against his former employer, Pacific Rim Mechanical Contractors, Inc. ("the Company").

This letter shall serve as Claimant's written notice to the Labor and Workforce Development Agency ("LWDA") and the Company of the alleged Labor Code violations Claimant claims that the Company committed against him and all other aggrieved employees in California. Claimant provides this notice in accordance with the Private Attorneys General Act of 2004 ("PAGA"), California Labor Code ("Labor Code") § 2699.3. Claimant intends to file a civil action to enforce his rights under the Labor Code and seeks compensation accordingly.

Pursuant to Labor Code § 2699(a), and by way of this letter, Claimant also intends to represent himself and all other current and former non-exempt employees who performed work for the Company in California and who have suffered at least one of the wage and hour violations described herein during the relevant time period ("Aggrieved Employees").

FACTUAL BACKGROUND

Pacific Rim Mechanical Contractors, Inc. ("the Company") is a California corporation, which has its principal place of business in San Diego, California. The Company is a mechanical contractor in Southern California that provides maintenance services, repair and replace services, emergency services, and energy controls and automation. The Company is believed to have completed over 5,500 construction projects in a wide variety of industries.

Claimant was employed with the Company as a sheet metal journeyman in San Diego, California, from approximately September 2020 to May 10, 2023, when he was terminated in retaliation for requesting and/or taking protected leave under the California Family Rights Act ("CFRA"). Claimant was typically scheduled to work five days and 40 hours per week, with occasional overtime. Claimant's schedule varied, but he would typically start work between 5:00 a.m. to 7:00 a.m. and end his shifts between 1:00 p.m. and 3:00 p.m. At all times, Claimant was a non-exempt employee and was paid an hourly wage. At the beginning of his employment, Claimant was paid $34 per hour, which was increased to $38 per hour at his first annual review. As a sheet metal journeyman, Claimant's job duties included, but were not limited to, installing, repairing, and fabricating sheet metal on ductwork, and operating machinery.

Claimant alleges that the Company denied, and continues to deny, Claimant and other Aggrieved Employees specific rights afforded to them under the Labor Code and the applicable Industrial Welfare Commission ("IWC") Wage Order. Specifically, the Company (1) failed to provide Claimant and other Aggrieved Employees with legally compliant meal periods and/or pay meal period premium wages; (2) failed to provide Claimant and other Aggrieved Employees with legally compliant rest periods and/or pay rest period premium wages; (3) failed to timely pay all minimum, regular, and/or overtime wages; (4) failed to reimburse for necessary business expenses; (5) failed to timely pay Claimant and other former Aggrieved Employees all wages due and owing upon separation of employment or the required waiting time penalties; (6) failed to furnish Aggrieved Employees, including Claimant, with accurate itemized wage statements; (7) failed to maintain accurate employment records; and (8) retaliated against Claimant for requesting and/or taking protected leave under CFRA and for reporting a violation of CFRA.

The Company required Claimant and, on information and belief, other Aggrieved Employees to work through their meal periods, receive less than thirty (30) minute meal periods, take interrupted meal periods, or did not allow them to take meal periods before the end of their fifth hour of work. During his employment with the Company, Claimant's meal breaks were frequently interrupted by work duties. For instance, Claimant had to unload deliveries of ductwork, sheet metal, and other materials during his meal breaks because the deliveries were often scheduled to arrive during the time that took his meal periods. Because the worksite had a limited amount of space for delivery trucks, Claimant was instructed by his foreman to prioritize unloading these deliveries over taking lawful meal periods. Furthermore, Claimant's meal periods were occasionally shortened by several minutes because he had to climb down from the roof and walk from his work area to the break area during his meal periods. Claimant was told by his foreman that he was not permitted to complete these work duties prior to the start of his meal period. Claimant is informed and believes that other Aggrieved Employees also received interrupted and/or shortened meal periods.

The Company further failed to provide Claimant and other Aggrieved Employees with ten (10) minute rest breaks per every four-hour work period, or major fraction thereof. Specifically, Claimant often worked through his rest breaks because he typically was only given one rest break for the entirety of his shift. Claimant and, on information and belief, other Aggrieved Employees were pressured, coerced, and/or otherwise compelled to finish their assigned projects, unload deliveries, and perform other work duties during their rest periods.

Although Claimant and, on information and belief, other Aggrieved Employees did not receive legally compliant meal and/or rest periods, the Company did not pay Claimant and other Aggrieved Employees the additional one hour of pay at the employee's regular rate of pay as required under Labor Code § 226.7 and the applicable IWC Wage Order. Accordingly, the Company owes Claimant and other Aggrieved Employees a meal and/or rest period premium for each workday that Claimant and other Aggrieved Employees were not provided with a compliant meal and/or rest period.

Additionally, Claimant and, on information and belief, other Aggrieved Employees were not paid all minimum, regular, and/or overtime wages owed for all the time actually worked on the designated pay-days. Claimant and other Aggrieved Employees were not properly compensated for all the hours they worked because the Company required them to work during their meal periods, and often required them to perform tasks while off-the-clock. For example, Claimant was frequently required to travel between multiple job sites during his shifts. However, the time that Claimant spent driving from one site to another was not considered compensable time by the Company. Claimant could only record the time that he spent working while he was at the worksite. Therefore, Claimant and, on information and belief, other Aggrieved Employees were not compensated for the time spent driving between different worksites.

The Company also failed to reimburse Claimant and, on information and belief, other Aggrieved Employees, for use of their personal vehicles for work-related reasons. Claimant and other Aggrieved Employees were required to use their personal vehicles to drive to different worksites during their shifts, but they were not reimbursed by the Company for mileage or other expenses associated with using their personal vehicles. Thus, the Company failed to reimburse Aggrieved Employees, including Claimant, for all necessary business expenditures incurred in the discharge of their work duties.

As a direct result of the aforementioned Labor Code violations, the Company did not pay Claimant and, on information and belief, other former Aggrieved Employees all wages due and owing upon separation of employment, including minimum, regular, and overtime wages for all hours worked, and premium wages for non-compliant meal and rest periods. The Company further failed to pay Claimant and other former Aggrieved Employees the requisite waiting time penalties for the late payment of wages. For instance, Claimant was not paid all of his wages due and owing upon his termination, including meal and rest period premiums and wages owed for time spent driving between job sites. To date, Claimant has not been paid these wages, nor has he been paid the requisite waiting time penalties.

Claimant contends that the Company furnished Aggrieved Employees, including himself, with wage statements that do not comply with California law. Claimant alleges that the wage statements furnished to him and other Aggrieved Employees did not correctly show the information required by Labor Code § 226(a), including, but not limited to, the total hours actually worked by the employee, all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee, the gross wages actually earned, and the net actual wages earned. For example, the wage statements issued to Claimant did not reflect the meal and rest period premiums owed to him. Due to the missing and/or incorrect information, Claimant and other Aggrieved Employees were unable to promptly and easily determine the total number of hours worked or the applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate.

As a direct result of the Company's illegal policies and procedures, like those described herein, the Company failed to maintain accurate records reflecting all of Claimant's and other Aggrieved Employees' time worked, the beginning and end of each meal period, and actual wages earned and paid, in violation of California law. For instance, Claimant's timesheets did not reflect the actual times that Claimant took his meal periods, nor did the timesheets reflect the time Claimant spent driving between different job sites during his shifts.

The Company also engaged in retaliation against Claimant and wrongfully terminated him in violation of Labor Code §§ 98.6 and 1102.5. In March of 2023, Claimant's wife was admitted to the hospital due to a diagnosis of pneumonia. Claimant requested to take protected leave under CFRA in order to care for his wife while she was seriously ill. Claimant initially requested four weeks for his CRA leave, but had to request an extension of an additional four weeks when his wife's condition didn't improve. Approximately one week before Claimant was scheduled to return from his CFRA leave, his superintendent called him and informed him that he was terminated. During the call, Claimant disclosed that he believed the termination was improper because he was on CFRA leave. The superintendent acknowledged Claimant was on protected leave but confirmed that the termination was final. Plaintiff is informed and believes that he was terminated because he requested and/or took protected leave under CFRA and for reporting a violation of CFRA. This retaliation was in violation of Labor Code §§ 98.6(a) and 1102.5(b), which prohibit adverse actions against employees engaging in protected, lawful conduct.

Due to the foregoing Labor Code violations, the Company denied, and continues to deny, Claimant and other Aggrieved Employees certain rights afforded them under the Labor Code and applicable IWC Wage Order. Claimant makes these claims against the Company on behalf of himself and other Aggrieved Employees.

All facts, claims, and/or legal theories contained within this written notice are alleged and/or asserted on behalf of Claimant and all other Aggrieved Employees. The facts, claims, and/or legal theories contained in this written notice are based on the information available at the time of this writing. Since Claimant's investigation is ongoing, Claimant reserves his right to assert any and all related facts, claims, and/or theories of liability discovered after the sending of this letter on behalf of himself and all other current or former Aggrieved Employees against the Company and/or other persons that may be discovered after the sending of this letter. Such other persons may include, but are not limited to, those persons who have acted as an agent, subsidiary, servant, employee, co-conspirator, alter-ego, and/or joint venture of the Company, as well as those persons who caused and/or concurrently contributed to the various acts and/or admissions of each and every one of the others, including the Company, in proximately causing the wrongful conduct, harm, and/or damages alleged herein or otherwise participated in or ratified any or all of the acts and/or omissions complained herein, and those who were acting within the authority and/or scope of the Company. Claimant reserves the right to revise these facts and/or add any new claims or legal theories by amending this written notice and/or by adding facts, claims, and/or legal theories to his civil complaint.

FAILURE TO PROVIDE LEGALLY COMPLIANT MEAL PERIODS AND/OR COMPENSATION IN LIEU THEREOF

(Labor Code §§ 226.7, 512, 558, and the "Meal Periods" section of the Applicable IWC Wage Order)

Labor Code § 226.7(b) states, "[a]n employer shall not require an employee to work during a meal …period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission…" Labor Code § 226.7(c) further states, "[i]f an employer fails to provide an employee a meal … period in accordance with a state law… the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal … period is not provided."

Labor Code § 512(a) states, "[a]n employer shall not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes…[and] shall not employe an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes." A meal period generally comports with the requirements of California law if the employee has at least 30-minutes uninterrupted and the employee is relieved of any and all duty and is free to leave the premises during such time. (*Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1036.) California law further prohibits employers from "…undermining [its] formal policy of providing meal breaks by pressuring employees to perform their duties in ways that omit breaks." (*Id*. at p. 1040.)

The "Meal Periods" section of the applicable IWC Wage Order states, "[n]o employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee." Moreover, "[a]n employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of employer and employee only if the first meal period was not waived." The IWC Wage Order further states, "[i]f an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided."

The "Meal Periods" section of the applicable IWC Wage Order also states, "[u]nless the employee is relieved of all duty during a 30-minute meal period, the meal period shall be considered an 'on duty' meal period and counted as time worked. An 'on duty' meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job meal period is agreed to and complies with Labor Code Section 512."

Labor Code § 558 provides that "any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty" of $50 for each underpaid employee for each pay period for which the employee was underpaid for any initial violation, and $100 for each underpaid employee for each pay period for which the employee was underpaid for each subsequent violation.

As set forth above, the Company failed to provide Claimant and, on information and belief, other Aggrieved Employees with the opportunity to take uninterrupted, off-duty meal periods of at least 30-minutes before the start of their sixth hour of work as required by California law. The Company further failed to pay Claimant and, on information and belief, other Aggrieved Employees one-hour of premium wages for each day a compliant meal period was not provided. Claimant will pursue all available remedies for the Company's violations on behalf of himself and all other Aggrieved Employees to the extent allowed by law.

FAILURE TO PROVIDE LEGALLY COMPLIANT REST PERIODS AND/OR COMPENSATION IN LIEU THEREOF

(Labor Code §§ 226.7 and the "Rest Periods" section of the Applicable IWC Wage Order)

Labor Code § 226.7(b) states, "[a]n employer shall not require an employee to work during a … rest … period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission…" Labor Code § 226.7(c) further states, "[i]f an employer fails to provide an employee a … rest … period in accordance with a state law… the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the … rest … period is not provided."

The "Rest Periods" section of the applicable IWC Wage Order provides, "[e]very employer shall authorize and permit employees to take rest periods, which insofar as practicable shall be in the middle of each work period. … The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours worked, or major fraction thereof. Rest periods shall take place at employer designated areas, which may include or be limited to the employees' immediate work area." The IWC Wage Order further states, "Rest periods need not be authorized in limited circumstances when the disruption of continuous operations would jeopardize the product or process of the work. However, the employer shall make up the missed rest period within the same workday or compensate the employee for the missed ten (10) minutes of rest time at his/her regular rate of pay within the same pay period." Furthermore, "[i]f an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided."

An employer has not authorized or permitted lawful off-duty rest periods unless the employer relieves its employees of any and all work-related duties and relinquishes all control over how its employees spend their time during rest periods. (*Augustus v. ABM Security Services, Inc*. (2016) 2 Cal.5th 267, 269.)

As set forth above, the Company failed to authorize and permit Claimant and, on information and belief, other Aggrieved Employees to take legally compliant rest periods, as required by California law. The Company further failed to pay Claimant and, on information and belief, other Aggrieved Employees one-hour of premium wages for each day a compliant rest period was not provided. Claimant will pursue all available remedies for the Company's violations on behalf of himself and all other Aggrieved Employees to the extent allowed by law.

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<u>FAILURE TO TIMELY PAY ALL MINIMUM, REGULAR, AND/OR OVERTIME WAGES</u>
(Labor Code §§ 204, 510, 558, 1194, 1194.2, 1197, 1197.1, 1198, and the "Minimum Wages" and "Hours and Days of Work" sections of the Applicable IWC Wage Order)

Labor Code § 204 establishes an employee's fundamental right in the state of California to be paid wages in a timely manner for their work. Specifically, Labor Code § 204(a) states that all wages earned are due and payable twice during each calendar month on days designated in advance by the employer as regular pay days. Overtime wages are to be paid no later than the payday for the next regular payroll period. (Labor Code § 204(b)(1).)

Labor Code § 1197 states, "[t]he minimum wage for employees fixed by the commission or by any applicable state or local law, is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful." The "Minimum Wages" section of the applicable IWC Wage Order further provides that, "[e]very employer shall pay to each employee not less than…" the applicable minimum wage in California.

Labor Code § 1197.1 provides that, "[a]ny employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law or by an order of the commission shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to § 203as follows: (1) For any initial violation that is intentionally committed, one hundred dollars ($100) for each underpaid employee for each pay period for which the employee is underpaid…(2) For each subsequent violation for the same specific offense, two hundred fifty dollars ($250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed."

Labor Code § 1198 states, "[t]he maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful."

Labor Code § 510 provides, "[e]ight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee." The "Hours and Days of Work" section of the applicable IWC Wage Order mandates the same requirements.

Labor Code § 1194(a) mandates that "…any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit." Liquidated damages in an amount equal to the minimum wages unlawfully unpaid and interest thereon are provided for under Labor Code § 1194.2.

Labor Code § 558 provides that "any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty" of $50 for each underpaid employee for each pay period for which the employee was underpaid for any initial violation, and $100 for each underpaid employee for each pay period for which the employee was underpaid for each subsequent violation.

As set forth above, the Company failed to pay Claimant and, on information and belief, other Aggrieved Employees all minimum, regular, and overtime wages for all time engaged in work on behalf of the Company. Claimant will pursue all available remedies for the Company's violations on behalf of himself and all other Aggrieved Employees to the extent allowed by law.

FAILURE TO REIMBURSE FOR BUSINESS EXPENSES
(Labor Code § 2802)

Labor Code § 2802(a) provides in pertinent part, "[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer."

Labor Code § 2802(b) states, "[a]ll awards made by a court or by the Division of Labor Standards Enforcement for reimbursement of necessary expenditures under this section shall carry interest at the same rate as judgments in civil actions. Interest shall accrue from the date on which the employee incurred the necessary expenditure or loss." Accordingly, Claimant will request that he receive interest on the applicable amount.

Furthermore, Labor Code § 2802(c) states, "[f]or purposes of this section, the term 'necessary expenditures or losses' shall include all reasonable costs, including, but not limited to, attorney's fees incurred by the employee enforcing the rights granted by this section." Consequently, Claimant will also request reimbursement of the attorney's fees incurred in pursuing this matter.

As set forth above, the Company required Claimant and, on information and belief, other Aggrieved Employees to use their personal vehicles to drive between worksites during their shifts. However, Claimant and Aggrieved Employees were not reimbursed for mileage and/or other expenses incurred in the use of their personal vehicles. Claimant will pursue all available remedies for the Company's violations on behalf of himself and all other Aggrieved Employees to the extent allowed by law.

FAILURE TO PAY ALL WAGES DUE AND OWING UPON SEPARATION OF EMPLOYMENT
(Labor Code §§ 201, 202, and 203)

Labor Code § 201 states, in pertinent part, "[i]f an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately."

Labor Code § 202 states, in pertinent part: "If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than

72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting."

Labor Code § 203(a) further states, "[i]f an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced; but the wages shall not continue for more than 30 days."

As set forth above, the Company violated these Labor Code sections by not paying Claimant and other former Aggrieved Employees all minimum, regular, and overtime wages owed, as well as meal and rest premium wages owed, within the required time upon separation of their employment. Claimant further contends that the Company did not pay him and, on information and belief, other former Aggrieved Employees the required waiting time penalties for the late payment of wages. Claimant will pursue all available remedies for these alleged violations on behalf of himself and all other former Aggrieved Employees to the extent allowed by the law.

FAILURE TO FURNISH ACCURATE ITEMIZED WAGE STATEMENTS

(Labor Code §§ 226 and 226.3, and the "Records" section of the Applicable IWC Wage Order)

Labor Code § 226(a) states in pertinent part: An employer, semimonthly or at the time of each payment of wages, shall furnish each of his or her employee, either as detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee… (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number…(8) the name and address of the legal entity that is the employer, and… (9) all applicable hourly rates in effect during each period and the corresponding number of hours worked at each hourly rate by the employee…

The "Records" section of the applicable IWC Wage Order further provides, in pertinent part: "Every employer who has control over wages, hours, or working conditions shall semimonthly or at the time of each payment of wages furnish each employee an itemized wage statement in writing showing (1) all deductions; (2) the inclusive dates of the period for which the employee is paid; (3) the name of the employee or the employee's social security number; and (4) the name of the employer, provided all deductions made on written orders of the employee may be aggregate and shown as one item."

Labor Code § 226(e)(1) provides: "An employee suffering injury as a result of knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars ($50) for the initial pay period in which a violation occurs and one hundred dollars ($100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand ($4,000), and is entitled to an award of costs and reasonable attorney's fees."

Labor Code § 226(h) states, "an employee may also bring an action for injunctive relief to ensure compliance with this section and is entitled to an award of costs and reasonable attorneys' fees."

Labor Code § 226.3 imposes an additional civil penalty of $250 per employee per violation in an initial citation and $1,000 per employee per violation for any subsequent violation on the employer for violations of Labor Code § 226(a).

As discussed above, the Company failed to furnish Claimant and other Aggrieved Employees with accurate itemized wage statements that comply with the requirements of the Labor Code because the wage statements did not, among other things, include the total hours actually worked by the employee, all applicable hourly rates in effect during the pay period, and the corresponding number of hours worked at each hourly rate by the employee, the gross actual wages earned, and the net wages actually earned. Claimant will pursue all available remedies against the Company for its violations of the Labor Code on behalf of himself and all other Aggrieved Employees to the extent allowed by law.

FAILURE TO MAINTAIN ACCURATE RECORDS
(Labor Code §§ 1174, 1174.5, and the "Records" section of the Applicable IWC Wage Order)

Labor Code § 1174 states, "[e]very person employing labor in this state shall… [k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, …, employees employed at the respective plants or establishments."

The "Records" section of the applicable IWC Wage Order states that every employer shall keep accurate information with respect to each one of its employees, including time records showing when the employee begins and ends each work period and meal period, total hours worked in the payroll period and applicable rates of pay, and total wages paid each payroll period.

Labor Code § 1174.5 imposes a civil penalty of $500 for an employer's failure to maintain accurate and complete records. This civil penalty is in addition to the civil penalty of $100 per pay period, per Aggrieved Employee that would be imposed pursuant to Labor Code § 2699 for a violation of Labor Code § 1174(d).

As set forth above, the Company violated its record keeping requirements by failing to accurately record employee hours worked including, but not limited to, the Company's failure to record the proper beginning and end of each work period, the meal periods, the total hours worked during the pay period, the applicable rates of pay, and the actual wages earned and paid. Claimant will pursue all available remedies for the Company's violations on behalf of himself and all other Aggrieved Employees to the extent allowed by law.

RETALIATION
(Labor Code §§ 98.6 and 1102.5)

Labor Code § 98.6(a) states, "[a] person shall not discharge an employee or in any manner discriminate, retaliate, or take any adverse action against any employee or applicant for employment … because of the exercise by the employee or applicant for employment on behalf of himself, herself, or others of any rights afforded him or her." In addition to other remedies available, an employer who violates Labor Code § 98.6 is "liable for a civil penalty not exceeding ten thousand dollars ($10,000) per employee for each violation of this section, to be awarded to the employee or employees who suffered the violation." (Labor Code § 98.6(a)(3).)

Labor Code § 1102.5(b) states, "[a]n employer, or any person acting on behalf of the employer, shall not retaliate against an employee for disclosing information, or because the employer believes that the employee disclosed or may disclose information, … to a person with authority over the employee or another employee who has the authority to investigate, discover, or correct the violation or noncompliance, … if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing the information is part of the employee's job duties." In addition to other penalties, "an employer that is a corporation or limited liability Companies is liable for a civil penalty not exceeding ten thousand dollars ($10,000) for each violation of this section." (Labor Code § 1102.5(f).)

As set forth above, the Company engaged in retaliation against Claimant and wrongfully terminated him for taking CFRA leave or requesting it, and for reporting a violation of CFRA. Claimant will pursue all available remedies for the Company's violations to the extent allowed by law.

CIVIL PENALTIES FOR VIOLATIONS OF THE LABOR CODE AND THE APPLICABLE IWC WAGE ORDER
(Labor Code §§ 210, 226.3, 558, 558.1, 1174.5, 1197.1, and 2699(f))

Labor Code § 210 provides that any person who fails to pay wages as provided in Labor Code § 204 shall be subject to a civil penalty of $100 for any initial violation for each failure to pay each employee and for each subsequent violation, or any willful or intentional violation, $200 for each failure to pay each employee, plus 25% of the amount unlawfully withheld, in addition to any other penalty.

For violations of Labor Code § 226(a), Labor Code § 226.3 imposes a civil penalty of $250 per employee per violation in an initial citation and $1,000 per employee for each violation in a subsequent citation.

Labor Code § 558 subjects any employer or any person acting on behalf of an employer who violates Part 2, Chapter 1, of the Labor Code (Labor Code §§ 500-558.1) or any provision regulating the hours and days of work in any IWC Wage Order to a civil penalty as follows: "[f]or any initial violation, fifty dollars ($50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. For each subsequent violation, one hundred dollars ($100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages."

Labor Code § 558.1(a) further states that "[a]ny employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wage or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation." This includes the owners, officers, directors, or managing agents of the employer. (Labor Code § 558.1(b).)

For violations of Labor Code § 1174 subdivisions (b), (c), and (d), Labor Code § 1174.5 imposes a civil penalty of $500.

Similarly, Labor Code § 1197.1 subjects any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law, or by an order of the commission to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to Section 203 as follows: "(1) For any initial violation that is intentionally committed, one hundred dollars ($100) for each underpaid employee for each pay period for which the employee is underpaid. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203. (2) For each subsequent violation for the same specific offense, two hundred fifty dollars ($250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203. (3) Wages, liquidated damages, and any applicable penalties imposed pursuant to Section 203, recovered pursuant to this section shall be paid to the affected employee."

Labor Code § 2699(f) imposes a civil penalty of $100 per pay period, per employee for the initial violation and $200 per pay period, per employee for each subsequent violation for all Labor Code provisions for which a civil penalty is not specifically provided, including, but not limited to, Labor Code §§ 98.6, 201, 202, 203, 204, 226(a), 226.7, 510, 512, 1102.5, 1174(c), 1174(d), 1194, 1197, 1197.1, 1198, 2802, and relevant IWC Wage Orders.

As set forth above, the Company violated the Labor Code and the applicable IWC Wage Order by failing to provide legally compliant meal and/or rest periods and/or timely pay premium wages; failing to timely pay all minimum, regular, and/or overtime wages; failing to reimburse for necessary business expenses; failing to timely pay all wages due and owing upon separation of employment and/or the required waiting time penalties; failing to furnish accurate itemized wage statements; and failing to maintain accurate records. As a result, the Company is liable for civil penalties under Labor Code §§ 210, 226.3, 558, 558.1, 1174.5, 1197.1, and 2699(f). Claimant will pursue all available remedies including, but not limited to, those stated herein for the Company's violations on behalf of himself and all other Aggrieved Employees to the extent allowed by law.

ATTORNEY'S FEES, COSTS, INTEREST, LIQUIDATED DAMAGES, AND PENALTIES
(Labor Code §§ 210, 218.5, 218.6, 226(e), 558, 1194, 1194.2, 1197.1, and 2698 et seq.)

Labor Code §§ 210, 218.5, 218.6, 226(e), 558, 1194, 1194.2, 1197.1, and 2698 *et seq*., among others, give employees, such as Claimant, the right to recover in a civil action the full amount of damages, liquidated damages, and penalties, including interest thereon, as well as reasonable attorneys' fees and costs.

Under Labor Code § 2699(g)(1), an aggrieved employee, such as Claimant, is entitled to an award of reasonable attorney's fees and costs. Pursuant to Labor Code § 2699(i), an aggrieved employee, such as Claimant, is entitled to collect 25% of the penalty assessment. Accordingly, the Company is liable for these items. Claimant has already incurred actual damages, costs, and attorney's fees, and he will continue to incur such costs as a result of the Company's unlawful actions. Claimant will pursue all available remedies against the Company, including those provided under the PAGA, on behalf of himself and all other

Aggrieved Employees to the extent permitted by California law for the violations of law described herein and those that may be later discovered.

CONCLUSION

Based on the foregoing, the Company has violated, and continues to violate, the Labor Code and the applicable IWC Wage Order, thereby depriving Claimant and other Aggrieved Employees of the rights and protections afforded to them. Claimant has satisfied the prerequisites of the PAGA to serve as a representative of all Aggrieved Employees, the general public, and the state of California in order to enforce California labor laws and to seek civil penalties for the provisions set forth herein, as well as those which may be later discovered.

Accordingly, if the LWDA declines to intervene or act within the time prescribed by the PAGA, Claimant may elect to initiate and/or amend a civil action, on behalf of himself and all other Aggrieved Employees, as permitted by the PAGA.

Very truly yours,

Allison E Schubert

Allison E. Schubert

From:	noreply@salesforce.com on behalf of LWDA DO NOT REPLY
To:	Amy Bevan
Subject:	Thank you for submission of your PAGA Case.
Date:	Monday, July 31, 2023 2:42:37 PM

7/31/2023

LWDA Case No. LWDA-CM-971902-23
Law Firm : GrahamHollis, APC
Plaintiff Name : Rathy Sy
Employer: Pacific Rim Mechanical Contractors, Inc.
Filing Fee : $75.00
IFP Claimed : No

Item submitted: Initial PAGA Notice

Thank you for your submission to the Labor and Workforce Development Agency. Please make a note of the LWDA Case No. above as you may need this number for future reference when filing any subsequent documents for this Case.

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act htm