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October 4, 2023

VIA CERTIFIED MAIL

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

VIA ONLINE FILING SYSTEM

PAGA Administrator
California Labor & Workforce Development Agency (LWDA)
pagafileings@dir.ca.gov

Re: Sergio Villarreal Hernandez

NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO LABOR CODE § 2699.3

Dear PAGA Administrator at California Labor & Workforce Development Agency:

This firm represents Sergio Villarreal Hernandez (“Mr. Hernandez”) in connection with claims arising from his employment with Pacific Rim Mechanical Contractors, Inc., a California corporation, and any other employer or person acting on behalf of Pacific Rim Mechanical Contractors, Inc. pursuant to Labor Code sections 558, subdivision (a), and 558.1 (collectively “Employer”). Employer is a mechanical contractor that provides construction services on commercial projects in California. Mr. Hernandez is an “aggrieved employee” as defined by Labor Code section 2699 *et seq.* due to Employer’s violations of the Labor Code as set forth below. The purpose of this Notice is to comply with Labor Code section 2699.3 which requires aggrieved employees to notify their employer and the Labor & Workforce Development Agency (“LWDA”) of the specific provisions of the Labor Code allegedly violated. This Notice is being sent simultaneously to Employer via certified mail.

Mr. Hernandez was employed by Employer as a full-time, hourly-paid, non-exempt employee from approximately September 2021 to July 2023. During his employment, Mr. Hernandez worked for Employer as a pipefitter on various construction sites. Although it varied

by project, Mr. Hernandez's schedule was typically from 6:00 a.m. to 2:30 p.m. On some projects, Mr. Hernandez worked longer shifts in excess of ten (10) hours.

Pursuant to the California Private Attorneys General Act ("PAGA"), Mr. Hernandez seeks to represent and recover civil penalties on behalf of himself and other non-exempt "aggrieved employees" who were subject to the Labor Code violations alleged herein. For purposes of this Notice, "aggrieved employees" includes all of Employer's current and former non-exempt employees in California who were subject to the following alleged policies and practices within one-year preceding the date of this Notice and ongoing (the "PAGA Period"). California Judicial Council Emergency Rule 9 tolled the statute of limitations for civil causes of action from April 6, 2020 until October 1, 2020. Therefore, the applicable PAGA Period is extended six months.

On information and belief, Employer committed the following violations of the Labor Code and the applicable Industrial Welfare Commission ("IWC") Wage Order(s), including, but not limited to, IWC Wage Order 4-2001 and IWC Wage Order 16-2001. The claims made on behalf of Mr. Hernandez and other aggrieved employees are based upon the following facts and theories.

Meal Period Violations

An employer may 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 thirty minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. A second meal period of not less than thirty minutes is required if an employee works more than ten hours per day, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and employee only if the first meal period was not waived. LABOR CODE § 512. In general, when an employee works for a work period of more than five hours, a meal period must be provided no later than the end of the employee's fifth hour of work. When an employee works for a period of more than 10 hours, a second meal period must be provided no later than the end of the employee's tenth hour of work. *See Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004 (2012).

Due to Employer's meal period policies and/or practices, Employer failed to provide Mr. Hernandez and, on information and belief, all other aggrieved employees all required timely, uninterrupted, duty-free 30-minute meal periods. *See* LABOR CODE §§ 226.7 and 512. Mr. Hernandez and other aggrieved employees regularly worked periods of more than five hours without being provided a timely, complete, and duty-free meal period of at least 30 minutes at the required interval including before the end of each employees' fifth hour of work. For example, when Mr. Hernandez began his shift at 6:00 a.m., he was not provided a timely, duty-free meal period before 11:00 a.m. In addition, Mr. Hernandez was not provided a second meal period when he worked shifts over ten (10) hours. The nature of the work performed by Mr. Hernandez and all other aggrieved employees did not prevent them from being timely relieved for meal periods and Employer apparently did not have any policy or practice pertaining to meal period violations.

Among other things, upon information and belief (1) Employer did not have legally-compliant policies regarding the provision and timing of uninterrupted meal periods and/or systematically disregarded its own purported meal period policies; (2) Employer's management affecting hourly non-exempt employees failed and refused to implement and enforce legally

compliant meal period policies and practices; (3) Employer failed to adequately inform and train Mr. Hernandez and other aggrieved employees regarding their right to take timely, uninterrupted, and duty-free meal periods; (4) Employer failed to adequately inform and train Mr. Hernandez and other aggrieved employees about their right to premium wages for non-compliant meal periods; (5) the nature of the work performed by Mr. Hernandez and other aggrieved employees did not prevent them from being relieved of all duties during meal periods; and (6) Employer apparently did not have any policy or practice pertaining to meal period violations.

Despite the aforementioned facts and Employer's violations, Employer did not pay an additional hour of premium pay to Mr. Hernandez and all other aggrieved employees at their respective regular rates of pay for each meal period violation in accordance with Labor Code section 226.7. *See, Safeway, Inc. v. Superior Court (Esparza)*, 238 Cal.App.4th 1138, 1159 (2015) (failure to pay break premiums is indicative of "deep, system-wide error"). As a result, Mr. Hernandez and all other aggrieved employees are owed an additional hour of wages at their respective regular rate of compensation for each workday they experienced a meal period violation. LABOR CODE § 226.7 ("If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, 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 or rest period is not provided.")

As a further result of Employer's failure to pay meal period premium wages, Employer failed to furnish accurate itemized wage statements and failed to timely pay Mr. Hernandez and other aggrieved employees all wages owed at the time of their separations from employment. As a further result of Employer's failure to pay meal period premium wages, Employer failed to timely pay Mr. Hernandez and other aggrieved employees all wages earned at least twice during each calendar month. LABOR CODE § 204; *see also, Naranjo v. Spectrum Security Services, Inc.* 13 Cal.5th 93 (2022).

Rest Period Violations

The applicable Wage Order(s) and Labor Code sections 226.7, 516, and 558 establish the right of employees to be provided with a rest period of at least ten (10) minutes for each four (4) hour period worked, or major fraction thereof. Upon information and belief, Employer did not authorize and permit Mr. Hernandez and all other aggrieved employees to take all paid, interrupted, and duty-free rest periods to which they are legally entitled. Mr. Hernandez and other aggrieved employees did not receive all lawful rest periods because Employer required employees to work through their rest periods and/or caused them to not be able to take all rest periods at the required intervals.

Despite its violations, Employer did not pay an additional hour of premium to Mr. Hernandez and all aggrieved employees at their respective regular rates of pay for each rest period violation in accordance with Labor Code § 226.7. LABOR CODE § 226.7 ("If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, 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 or rest period is not provided."). Employer apparently also did not have any policy or practice pertaining to rest period violations. As a result, Mr. Hernandez and all other aggrieved employees are owed an additional

hour of premium wages at their regular rate of compensation for each workday they experienced a rest period violation.

As a further result of Employer's failure to pay rest period premium wages, Employer failed to furnish accurate itemized wage statements and failed timely pay Mr. Hernandez and other aggrieved employees all wages owed at the time of their separations from employment. As a further result of Employer's failure to pay rest period premium wages, Employer failed to timely pay Mr. Hernandez and other aggrieved employees all wages earned at least twice during each calendar month. LABOR CODE § 204; *Naranjo v. Spectrum Security Services, Inc.* 13 Cal.5th 93 (2022).

Minimum Wage Violations

Employer was required to pay Mr. Hernandez and other aggrieved employees an hourly rate at least equal to the minimum wage for each hour worked. *See* Labor Code § 1182.12, 1194, 1194.2, 1197. On information and belief, Employer required Mr. Hernandez and other aggrieved employees to work off-the-clock by, among other things, work performed during meal and rest breaks. As a result of its unlawful practices, which failed to compensate for all hours worked, Mr. Hernandez and other aggrieved employees were deprived of all required minimum wages.

As a further result of Employer's failure to pay all minimum wages, Employer failed to timely pay Mr. Hernandez and all other aggrieved employees all wages owed at the time of their separations from employment. As a further result of Employer's failure to pay minimum wages, Employer failed to timely pay Mr. Hernandez and other aggrieved employees all wages earned at least twice during each calendar month. LABOR CODE § 204.

Overtime Wage Violations

On information and belief, due to the Employer's policies and practices, Employer failed to pay Mr. Hernandez and all other aggrieved employees weekly and daily overtime pay in accordance with the Labor Code and applicable Wage Order(s). As a result, Mr. Hernandez and all other aggrieved employees, were deprived of all required overtime wages. As a further result of Employer's failure to pay all overtime wages, upon information and belief, Employer failed to timely pay Mr. Hernandez and all other aggrieved employees all wages owed at the time of their separations from employment. As a further result of Employer's failure to pay overtime wages, Employer failed to timely pay Mr. Hernandez and other aggrieved employees all wages earned at least twice during each calendar month. LABOR CODE § 204.

Failure to Reimburse Necessary Business Expenses

California Labor Code section 2802 subdivision (a) requires an employer to indemnify an employee for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her duties. During the relevant time period, Mr. Hernandez and other aggrieved employees incurred necessary business expenses and costs that were not reimbursed by Employer. Specifically, Employer required Mr. Hernandez and other aggrieved employees to use their personal cellular phones in the course of performing their required job duties without reimbursement. Among other things, Employer required Mr. Hernandez and other aggrieved employees to use their personal cell phones to respond to and communicate with Employer

regarding work matters, such as deliveries and other work issues. Employer also required Mr. Hernandez and other employees to use their own tools and equipment, and did not provide employees necessary tools. On information and belief, Employer does not have a policy or practice in place for reimbursement of business expenses. Employer had the obligation to reimburse Mr. Hernandez and all aggrieved employees for their cellular phone usage and tools and because of its failure to do so, Employer is subject to penalties, interest, and attorneys' fees. LABOR CODE § 2802 (b)-(d).

Wage Statement Violations

Employer was required to furnish Mr. Hernandez and all other aggrieved employees with timely, complete, and accurate itemized wage statements that showed, among other things: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (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 other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer, (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. LABOR CODE § 226(a); *see also*, LABOR CODE § 1174, subd. (d).

As a result of Employer's unlawful policies and practices including its failure to pay meal premium and rest premium pay, Employer maintained inaccurate payroll records and issued inaccurate wage statements to Mr. Hernandez and other aggrieved employees in violation Labor Code § 226. *Naranjo v. Spectrum Security Services, Inc.* 13 Cal.5th 93 (2022). In addition, and on information and belief, the wage statements issued by Employer failed to put the correct name of the legal entity that is the employer in accordance with paragraph (8) of subdivision (a) of Labor Code section 226. On information and belief, Employer's wage statements incorrectly identified "Pacific Rim Mechanical" as the employer. On information and belief, Employer's failure to comply with its wage statement obligations was knowing and intentional, and Mr. Hernandez and other aggrieved employees have suffered injury as a result. Further, Mr. Hernandez and other aggrieved employees can prevail on a claim for PAGA penalties under Labor Code § 226 without having to show injury or willfulness. *See, Jimenez v. Friant & Assocs., LLC*, 15 Cal.App.5th 773, 788 (2017) ("a plaintiff seeking civil penalties under PAGA for a violation of Labor Code section 226(a) does not have to satisfy the 'injury' and 'knowing and intentional' requirements of section 226(e)(1)."); *Raines v. Coastal Pacific Food Distributors, Inc.*, 23 Cal.App.5th 667, 679 (2018) ("requirements for a section 226(e) claim do not apply to a PAGA claim for a violation of Section 226(a)"). Labor Code section 226.3 provides in relevant part: "Any employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$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 subdivision (a) of Section 226. The civil penalties provided for in this section are in addition to any other penalty provided by law."

As a result of Employer's failure to furnish Mr. Hernandez and other aggrieved employees timely, accurate, and complete wage statements in accordance with Labor Code § 226, subdivision (a), Mr. Hernandez and other aggrieved employee may recover Labor Code § 226.3 penalties under PAGA in lieu of the normal penalties provided for in Labor Code § 226.

Waiting Time Penalties

Labor Code sections 201 and 202 require that employees receive all of their final wages at the time of their separation of employment. On information and belief, Employer failed to timely pay aggrieved employees all of their final wages at the time of their separation, which final pay was to include, but did not include, all meal and rest period premiums. Employer's failure to pay all final wages due was willful and thus entitles aggrieved employees to waiting time penalties equal to one day of wages at their standard hourly rate for each day Employer failed to pay their final wages after separation, up to a maximum of thirty (30) days.

Failure to Maintain Accurate Records

Despite its record-keeping obligations, Employer failed to maintain accurate records on behalf of Mr. Hernandez and, on information and belief, all other aggrieved employees. LABOR CODE § 1174.

As an "aggrieved employee" Mr. Hernandez intends to initiate a civil action on behalf of himself and all other aggrieved employees to recover damages, statutory penalties, and civil penalties (including an amount equal to the unpaid wages) resulting from the wage and hour violations described above.

Based on information and belief and investigation to date, Employer has committed the following alleged Labor Code violations:

1. Labor Code §§ 226.7, 512, and 558 by failing to provide Mr. Hernandez and all other aggrieved employees with all lawful, timely, uninterrupted, and duty-free meal periods;
2. Labor Code §§ 226.7, 516, and 558 by failing to provide Mr. Hernandez and all other aggrieved employees with all lawful, timely, uninterrupted, and duty-free rest periods;
3. Labor Code §§ 1182.12, 1194, 1194.2, and 1197 by failing to pay Mr. Hernandez and all other aggrieved employees the statutory minimum wage for all hours worked;
4. Labor Code §§ 204, 510, 558, 1194, and 1198 by failing to pay Mr. Hernandez and all other aggrieved employees all overtime compensation;
5. Labor Code §§ 226 and 226.3 by failing to furnish Mr. Hernandez and all other aggrieved employees with timely, accurate and compliant itemized wage statements;
6. Labor Code §§ 201-203 by failing to timely pay all final wages due to Mr. Hernandez and all other aggrieved employees upon their separation of employment;
7. Labor Code § 204 by failing to pay Mr. Hernandez and all other aggrieved employees all wages earned at least twice during each calendar month; and

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8. Labor Code §§ 558 and 1174 by failing to maintain accurate records on behalf of Mr. Hernandez and all other aggrieved employees; and
9. Labor Code § 2802 by failing to reimburse Mr. Hernandez and other aggrieved employees for necessary business-related expenses.

Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), please notify us within 65 calendar days of the postmark date of this Notice whether the LWDA intends to investigate these alleged violations.

This Notice sets forth the basis of Mr. Hernandez's grievances, rights, and remedies under the Labor Code and the PAGA. We appreciate your attention to this matter.

Please do not hesitate to contact us if you require any additional information.

Very truly yours,
NORTH LAW P.C.



Hengameh S. Safaei

cc: (via certified mail)

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