

CALIFORNIA SUPERIOR COURT
FOR THE COUNTY OF SACRAMENTO

BLAKE MCMAHON, individually and on behalf of all
other similarly situated employees,

Plaintiff,

vs.

AIRCO MECHANICAL, INC., a California Corporation;
and DOES 1 to 100, inclusive,

Defendant.

Case No. 34-2019-00259269

CLASS ACTION

**NOTICE OF PROPOSED CLASS ACTION AND
PAGA SETTLEMENT, AND HEARING DATE FOR
FINAL COURT APPROVAL OF SETTLEMENT**

ATTENTION: All individuals who have, or continue to, perform work for Defendant in California as non-exempt, hourly employees between June 25, 2015 and November 18, 2022 (the “Class Members”).

PLEASE READ THIS NOTICE CAREFULLY. THIS NOTICE RELATES TO A PROPOSED SETTLEMENT OF CLASS ACTION LITIGATION AND POTENTIAL DISBURSEMENT OF SETTLEMENT FUNDS TO YOU. IF YOU ARE A CLASS MEMBER, IT CONTAINS IMPORTANT INFORMATION ABOUT YOUR RIGHT TO PARTICIPATE OR TO OPT OUT OF THE SETTLEMENT ACCORDING TO THE PROCEDURES DESCRIBED BELOW.

Pursuant to an order from the Sacramento County Superior Court (“Court”) granting preliminary approval of this class action settlement, entered on December 14, 2022, you are receiving notice of a proposed class action and Private Attorneys General Act (“PAGA”) settlement between Plaintiff Blake McMahon (“Plaintiff” or “Class Representative”), and Defendant Airco Mechanical, Inc., (“Defendant”) on behalf of Class Members as defined above. You are receiving this notice because Defendant’s records indicate you fall within the definition of “Class Member.” Defendant’s records also indicate that you worked «Class_Weeks» weeks during the applicable Class Period (as defined below), which means your share of the settlement proceeds is estimated to be \$«Estimated_Class_Award». Your actual share of the settlement proceeds will vary depending on the total number of Class Members that choose to participate and the resolution of any workweek disputes as described in this notice. The terms of the Agreement and a description of the case are identified in this notice. Pursuant to the Court’s order, YOU ARE HEREBY NOTIFIED AS FOLLOWS:

I. BACKGROUND OF THE CASE

This lawsuit was originally filed on June 25, 2019, in Sacramento County Superior Court. In the operative Complaint, Plaintiff alleges class action and PAGA claims against Defendant on behalf of himself and Class Members. The term “Action” means this putative class action pending in Sacramento County Superior Court, Case No. 34-2019-00259269. The Class Period is June 25, 2015, through November 18, 2022 (the “Class Period”).

In the Action, Plaintiff sought to obtain unpaid wages, interest, statutory penalties, civil penalties, fees, and costs on behalf of himself, Class Members, and Aggrieved Employees. Plaintiff alleged eight (8) causes of action against Defendant, including 1) Failure to Pay Minimum Wages, 2) Failure to Pay Overtime Wages, 3) Meal Period Violations, 4) Rest Period Violations, 5) Wage Statement Violations, 6) Waiting Time Penalties, 7) Unfair Competition, and 8) PAGA claims based on the aforementioned Labor Code violations. Defendant has denied all of Plaintiff’s allegations. The Action has been actively litigated. There have been on-going investigations, and there has been an exchange of extensive documentation and information. Furthermore, the Parties have participated in a full day mediation facilitated by a neutral third party. Based upon the negotiations, and all known facts and circumstances, including the various risks and uncertainties related to legal actions, the Parties reached a class-wide and PAGA settlement. By settling, the Parties will avoid the risks associated with a lengthy litigation process. Despite agreeing to and supporting the Agreement, Defendant continue to deny all allegations and claims. Defendant has entered into this Settlement to fully, finally, and forever resolve this Action, based on the terms set forth in the Agreement, in order to avoid the burden and expense associated with ongoing litigation.

The Parties have entered into a Joint Stipulation Regarding Class Action and PAGA Settlement and Release (“Agreement” or “Settlement”), which has been preliminarily approved by the Court. The Agreement applies to any and all Class Members as defined above. “Class Member” does not include persons who submit valid request to opt out (as explained below). If you are a Class Member, you have the opportunity to participate in the Settlement or to exclude yourself (“opt out”) from the settlement. This notice is to advise you of how you can either participate in the Settlement or be excluded from the Settlement.

II. SUMMARY OF THE PROPOSED SETTLEMENT

A. The Amount of the Settlement

Under the terms of the Agreement, Defendant has agreed to pay a total sum of Four Hundred Forty Five Thousand Dollars and Zero Cents (\$445,000.00) (“Gross Settlement Amount”). Deducted from this Gross Settlement Amount will be sums approved by the Court for attorneys’ fees not to exceed 35% of the Gross Settlement Amount which equals \$155,750.00, attorneys’ costs not to exceed \$17,500.00, Claims Administrator Costs estimated not to exceed \$15,000.00, \$15,000.00 to the Class Representative as an Enhancement Payment, and \$10,000.00 for alleged PAGA penalties (the “PAGA Payment”), which will result in a “Net Settlement Amount” for distribution to all Class Members. Any employer side taxes attributable to payments allocated as wages will be paid by Defendant in addition to the Gross Settlement Amount. As explained further below, the amount of each Class Member’s share of the Net Settlement Amount will depend on the number of weeks worked by participating Class Members during the Class Period. Of the \$10,000.00 allocated to resolving the PAGA claims, 75% of the PAGA Payment will be paid to the State of California Labor and Workforce Development Agency and 25% of the PAGA Payment will be divided among Aggrieved Employees, which are defined as All non-exempt employees who have worked, or continue to work, for Defendant in California from July 1, 2018, up to November 18, 2022.

The number of weeks you worked during the Class Period and your estimated share of the Net Settlement Amount and PAGA Payment (“Claim Amount”) is stated on the first page of this notice. The actual amount received may be more or less than the amount stated depending on the actual number of weeks worked by participating Class Members, the resolution of any disputes regarding workweeks, and on the distributions finally approved and allocated by the Court. However, whether Class Members opt out will have no effect on Aggrieved Employees’ allocations for the PAGA claims.

B. Claim Amounts and Allocation Between Class Members and Aggrieved Employees

Defendant will pay Claim Amounts through the Claims Administrator, as described below, to each Class Member who does not opt out of the settlement and to Aggrieved Employees. All Claim Amounts will be subject to appropriate taxation. The Parties have agreed, based on the allegations in the Action that all Claim Amounts payable to eligible Class Members will be allocated from the Net Settlement Amount and paid as 2/3 for disputed interest, statutory penalties, and other non-wage damages for which IRS Forms 1099-MISC and 1099-INT will issue and 1/3 for disputed wages for which IRS Forms W-2 will issue. The PAGA Payment to Aggrieved employees will be paid as 100% for civil penalties.

Payment to Class Members who do not opt out and Aggrieved Employees will not require the submission of a claim form. Each Class Member’s share will be determined by dividing their total weeks worked within the Class Period by the total weeks worked by all Class Members within the Class Period. That fraction will then be multiplied by the Net Settlement Amount to arrive at the Class Member’s individual share of the Net Settlement Amount. Each Aggrieved Employee’s share of the 25% portion of the PAGA Payment will be determined by dividing their total weeks worked within the PAGA Claim Period by the total weeks worked by all Aggrieved Employees within the PAGA Claim Period. That fraction will then be multiplied by the 25% portion of the PAGA Payment to arrive at the Aggrieved Employee’s individual share. Receipt of the Claim Amounts will not entitle any Class Member or Aggrieved Employee to additional compensation or benefits under any compensation, retirement or benefit plan or agreement in place during the period covered by the Settlement.

C. Calculations to Be Based on Defendant’s Records and Resolution of Workweek Disputes

For each Class Member, the amount payable will be calculated by the Claims Administrator from Defendant’s records. Defendant’s records will be presumed correct unless evidence to the contrary is provided to the Claims Administrator. Defendant’s records and any additional evidence will be reviewed by the Claims Administrator in the event of a dispute about the number of workweeks worked by an individual Class Member. If a Class Member disputes the accuracy of Defendant’s records, all supporting documents evidencing additional workweeks must be submitted by the Class Member. The dispute must (a) identify the nature of the dispute; (b) provide any information or documentation supporting the dispute; (c) be signed; and (d) be post-marked no later than February 18, 2023. The dispute will be resolved by the Claims Administrator based on the records and evidence provided. The Claims Administrator’s decision on all disputes will be final and binding.

D. Release of Claims

For those Class Members who do not opt out and Aggrieved Employees, the Agreement contains the following releases:

Class members who do not opt out will be deemed to have released any and all claims contained in the Complaint and the PAGA Letters filed with the LWDA by Plaintiff, and any additional wage and hour claims that could have been brought based on the facts alleged in the Complaint and the PAGA Letters filed with the LWDA by Plaintiff, through the Class Period. This release excludes

the release of claims not permitted by law. The Qualified Claimant's Released Claims exclude claims for workers' compensation or unemployment insurance benefits.

Aggrieved Employees will be deemed to have released any and all claims that were brought under the Private Attorneys General Act, Labor Code §§ 2698 et seq., contained in the Complaint and the PAGA Letters filed with the LWDA by Plaintiff, and any additional wage and hour PAGA claims that could have been brought based on the facts alleged in the Complaint and the PAGA Letters filed with the LWDA by Plaintiff during the PAGA Claim Period. Aggrieved Employees cannot opt out of this waiver of claims.

The individuals released ("Released Parties") include Defendant, as well as each of their officers, directors, members, partners, owners, shareholders, agents, managing agents, insurers, assigns, predecessors, successors, parent companies and organizations, and any other entity which Plaintiff, individually on behalf of himself and on behalf of all Class Members and PAGA Members, might claim are responsible for the damages sought in the Action.

Class Members can talk to one of the lawyers appointed as Class Counsel (listed below) for free or talk to their own lawyer if Class Members have questions about the released claims and what they mean.

E. Attorneys' Fees and Costs

Class Counsel will seek \$236,250.00 for attorney's fees, and costs not to exceed \$15,000, as approved by the Court. Class Counsel's attorneys' fees and costs will be paid and deducted from the Gross Settlement Amount.

III. WHAT ARE YOUR RIGHTS AS A CLASS MEMBER

A. Participating in the Settlement

If you wish to participate in the settlement and believe your workweek information is accurate, **you do not need to take any further action**. Payment will be automatically made to you consistent with the terms of the Agreement and Court Order. If you wish to dispute the workweek calculation, you may follow the procedures outlined in Section II.C above. California law protects Class Members from retaliation based on their decision to participate in the Settlement.

B. Excluding Yourself from the Settlement

If you do not wish to participate in the settlement, you may be excluded (*i.e.*, "opt out") by submitting a timely written request to the Claims Administrator. The request to opt-out must (a) state your full name and date of birth; (b) a statement that you do not want to be a Class Member, do not want to participate in the settlement, and/or wants to be excluded from this settlement; (c) identify the case name and number (*i.e. McMahon v. Airco Mechanical, Inc.*, Case No. 34-2019-00259269); (d) be signed; and (e) be post-marked no later than **February 18, 2023**. The request to opt out must be signed, dated and mailed by First Class U.S. Mail or the equivalent, to:

ILYM Group, Inc.
P.O. Box 2031
Tustin, CA 92781

The request to opt out must be postmarked no later than February 18, 2023. If you submit a request to opt out which is not postmarked by February 18, 2023, your request to opt out will be rejected, and you will be bound by the release and all other terms of the Agreement. If the request to opt out is sent from within the United States it must be sent through the United States Postal Service by First Class Mail, or the equivalent. Do not use a postage meter as that may not result in a postmark appearing on the envelope containing your request to opt out. Any Class Member who submits a complete and timely request to opt out shall, upon receipt by the Claims Administrator, no longer be a Class Member and not received their share of the class settlement payment. Aggrieved Employees cannot opt out of this Agreement and will receive their share of the PAGA Payment regardless of whether they opt out of being a Class Member.

C. Objection to Settlement

If you do not opt out of the settlement, you can object to the terms of the Agreement. However, if the Court rejects your objection, you will still be bound by the terms of the Agreement. You can ask the Court to deny approval by filing an objection. You **cannot** ask the Court to order a larger settlement; the Court can only approve or deny the settlement. If the Court denies approval, no settlement payments will be sent out and the lawsuit will continue. If that is what you want to happen, you must object. The objection must (a) state your full name and date of birth; (b) provide evidence that you are, in fact, a Class Member; (c) state the reasons for the objection(s), including any legal analysis and/or supporting documentation; (d) identify the case name and number (*i.e. McMahon v.*

Airco Mechanical, Inc., Case No. 34-2019-00259269) (e) be signed; and (f) be post-marked no later than February 18, 2023. The objection must be sent to the Claims Administrator at the address identified in section III.B and to counsel for Plaintiff and Defendant at the addresses identified in section VI of this notice.

If you have submitted a written objection as outlined above, you may also appear at the Final Approval Hearing, either in person or through your own attorney, to state your objection. However, you must file a notice of intent to appear with the Court and serve the notice on counsel for Plaintiff and Defendant. If you appear through your own attorney, you are responsible for paying that attorney.

IV. EFFECT OF THE SETTLEMENT: RELEASED RIGHTS AND CLAIMS

After final approval of the settlement has been granted by the Court, each and every Class Member who does not opt out of the settlement and Aggrieved Employee, will release Defendant and the Released Parties from the released claims described above. In other words, if you were employed as a Class Member by Defendant in California during the Class Period, and you do not exclude yourself from the settlement, you will be deemed to have entered into this release and to have released the above-described claims. In addition, you will be barred from ever suing Defendant and the Released Parties with respect to the claims covered by this settlement. If the settlement is not approved by the Court or does not become final for some other reason, the litigation will continue.

V. FINAL SETTLEMENT APPROVAL HEARING

The Court will hold a hearing in Department 25, 820 9th Street Sacramento, California 95814 on March 24, 2023 at 9:00 a.m. to determine whether the Agreement should be finally approved as fair, reasonable and adequate. The Court also will be asked to approve Class Counsel's request for attorneys' fees and costs. The hearing may be continued without further notice to Class Members. It is not necessary for you to appear at this hearing, unless you wish to object to the settlement.

VI. ADDITIONAL INFORMATION

You may access a copy of this notice, the Complaint, Class Counsel's motions for Court approval, and the Agreement at the Settlement Administrator's website: <https://ilymgroup.com/>

If you want additional information about this lawsuit and its proceedings, you can contact Class Counsel or Defendant's Counsel as follows:

Galen T. Shimoda
Justin P. Rodriguez
Brittany V. Berzin
Shimoda & Rodriguez Law, PC
9401 East Stockton Blvd., Suite 120
Elk Grove, CA 95624
Telephone: (916) 525-0716
Facsimile: (916) 760-3733
On behalf of Plaintiff

Bruce M. Timm
Kimberly A. Lucia
Kendall C. Fisher-Wu
Boutin Jones Inc.
555 Capitol Mall, Ste. 1500
Sacramento, CA 95814
Telephone: (916) 441-7597
On behalf of Defendant

**PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS. IF YOU HAVE ANY QUESTIONS, CALL (888) 250-6810
BY ORDER OF THE COURT**