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7

8 **SUPERIOR COURT OF CALIFORNIA**
9 **FOR THE COUNTY OF SACRAMENTO**
10

11 MAURECE MARTIN, individually and on
12 behalf of all other similarly situated
employees,

13 Plaintiff,

14 vs.
15

16 WESTERN ENGINEERING
CONTRACTORS, INC., a California
17 Corporation; and DOES 1 to 100, inclusive,

18 Defendants.
19

Case No. 34-2023-00334816

*Assigned for All Purposes to Hon. Jill Talley,
Department 23*

CLASS ACTION

**PLAINTIFF'S NOTICE OF MOTION AND
MOTION FOR PRELIMINARY APPROVAL
OF CLASS ACTION AND PAGA
SETTLEMENT**

Reservation No. A-334816-001

Date: March 29, 2024

Time: 9:00 a.m.

Dept.: 23

Judge: Hon. Jill Talley

Filed: February 15, 2023

FAC Filed: May 25, 2023

Trial Date: None set

1 TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

2 PLEASE TAKE NOTICE that on March 29, 2024, at 9:00 a.m., or as soon thereafter as the
3 matter may be heard in Department 23 of the above-entitled Court, Plaintiff Maurece Martin,
4 individually and on behalf of all other similarly situated individuals, hereby moves for entry of an Order
5 for the following:

- 6 1. Preliminarily certifying the proposed class herein for purposes of settlement;
- 7 2. Preliminarily appointing Plaintiff Maurece Martin as class representative for purposes of
8 settlement;
- 9 3. Preliminarily appointing Shimoda & Rodriguez Law, PC, as Class Counsel for purposes of
10 settlement;
- 11 4. Preliminarily approving the proposed class action and Private Attorney's General Act
12 settlement, in the amount of \$417,500, which is incorporated herein by reference;
- 13 5. Preliminarily approving the appointment of Apex Class Action as the Settlement
14 Administrator and for payment to Apex Class Action for administering said class action
15 settlement in an amount not to exceed \$10,000;
- 16 6. Preliminarily approving the settlement of claims under the Private Attorneys General Act for
17 the total amount of \$41,750.00, 75% of which will be paid to the Labor and Workforce
18 Development Agency and 25% of which will be paid to Aggrieved Employees;
- 19 7. Approving as to form and content the Notice of Settlement, which provides Class Members
20 information regarding the settlement, their ability to opt out of, or object to, the class action
21 settlement and which provides instruction on how to dispute an individual's settlement
22 allocation under the proposed settlement agreement;
- 23 8. Approving the proposed procedures to notify the class and determining that the proposed
24 notification procedures and process comply with Class Members' due process rights and
25 directing the Notice of Settlement to be sent by first class mail to Class Members;
- 26 9. Directing Defendant to report employment information, including social security numbers, to
27 the Settlement Administrator to administer the settlement proceeds;
- 28

1 10. Scheduling a fairness hearing on the question of whether the proposed settlement should be
2 finally approved as fair, reasonable, and adequate;

3 11. Directing that any amount from settlement checks that were not cashed by the check cashing
4 deadline be donated to Sacramento Food Bank and Family Services under the doctrine of *cy*
5 *pres*;

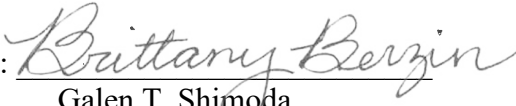
6 12. Preliminarily and conditionally approving and adopting the Proposed Order and its
7 implementation schedule, which is filed herewith and incorporated by reference.

8 This motion is being made pursuant to Code of Civil Procedure section 382, Labor Code section
9 2699(l), and California Rules of Court 3.769 and 3.764, on the grounds that the proposed class action
10 and Private Attorneys General Act settlement is fair, reasonable, and adequate as to all Class Members
11 and should be approved by the Court. This motion will be based on the notice of motion, memorandum
12 of points and authorities, the Declaration of Brittany V. Berzin, the Declaration of Maurece Martin,
13 exhibits, the record and files of this case, and any further oral or documentary evidence introduced at the
14 hearing of this motion.

15
16 **Pursuant to Local Rule 1.06 (A), the court will make a tentative ruling on the merits of this matter**
17 **by 2:00 p.m., the court day before the hearing. The complete text of the tentative rulings for the**
18 **department may be downloaded off the court's website. If the party does not have online access,**
19 **they may call the dedicated phone number for the department as referenced in the local telephone**
20 **directory between the hours of 2:00 p.m. and 4:00 p.m. on the court day before the hearing and**
21 **receive the tentative ruling. If you do not call the court and the opposing party by 4:00 p.m. the**
22 **court day before the hearing, no hearing will be held.**

23 Dated: March 5, 2024

Shimoda & Rodriguez Law, PC

24 By: 
25 Galen T. Shimoda
26 Justin P. Rodriguez
27 Brittany V. Berzin
28 Attorneys for Plaintiff

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Attorneys for Plaintiff MAURECE MARTIN

SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO

MAURECE MARTIN, individually and on
behalf of all other similarly situated
employees,

Plaintiff,

vs.

WESTERN ENGINEERING
CONTRACTORS, INC., a California
Corporation; and DOES 1 to 100, inclusive,
Defendants.

Case No. 34-2023-00334816

*Assigned for All Purposes to Hon. Jill Talley,
Department 23*

CLASS ACTION

**DECLARATION OF BRITTANY V. BERZIN
IN SUPPORT OF PLAINTIFF'S MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION AND PAGA SETTLEMENT**

Reservation No. A-334816-001

Date: March 29, 2024

Time: 9:00 a.m.

Dept.: 23

Judge: Hon. Jill Talley

Filed: February 15, 2023

FAC Filed: May 25, 2023

Trial Date: None set

1 I, Brittany V. Berzin, declare:

2 1. I am an attorney at law duly admitted to practice before all the courts of the State of
3 California and an attorney of record for Plaintiff Maurice Martin ("Plaintiff") herein. I am making this
4 declaration on behalf of the named Plaintiff, the putative class members, and in support of Plaintiff's
5 Motion for Preliminary Approval of Class Action and PAGA Settlement ("Motion"). A true and
6 correct copy of the Joint Stipulation Regarding Class Action and PAGA Settlement and Release
7 ("Agreement") in this matter is filed with this Motion as Exhibit A.

8 2. This case was brought as a wage and hour class action based on Plaintiff's contention
9 that Defendant Western Engineering Contractors, Inc. ("Defendant") failed to pay overtime, failed to
10 pay minimum wages, failed to provide meal and rest periods or pay premiums in lieu thereof, failed to
11 provide accurate wage statements, failed to timely pay final wages, failed to reimburse expenses, failed
12 to pay accrued vacation, and unfairly competed against other businesses. Plaintiff also alleged liability
13 for civil penalties under the Private Attorneys General Act ("PAGA"). These claims were based on
14 allegations that Defendant violated California law by 1) failing to accurately record and maintain
15 employees' hours worked; 2) failing to pay for all hours worked, including travel time, overtime and
16 minimum wages; 3) failing to authorize and permit putative class members to take all meal and rest
17 periods; 4) failing to include the inclusive dates of the pay period and employees' last 4 digits of their
18 social security number or employee identification number on wage statements issued to putative class
19 members; 5) failing to incorporate the value of prevailing wage rates into employees' paid sick leave
20 and regular rates of pay for the purpose of calculating overtime wages on non-prevailing wage jobs; 6)
21 failing to reimburse the use of personal cell phones and vehicles; and 7) failing to pay accrued and
22 unused vacation pay at all or at an employee's final regular rate of pay at the time of separation. The
23 PAGA, waiting time penalty, wage statement violation, and unfair competition claims also derive from
24 these violations.

25 3. Plaintiff is the only named representative in this matter. From our initial investigations
26 of Plaintiff's claims and documents, we believed these claims had merit and could be maintained as a
27 class action. We filed the action on or about February 15, 2023. Plaintiff filed a First Amended
28 Complaint on May 25, 2023 to add a PAGA claim. Plaintiff submitted a stipulation and order on

February 12, 2024, for leave to file a Second Amended Complaint to match the scope of the resolution reached by the Parties, adding claims for unpaid travel time, failure to reimburse expenses and failure to pay accrued vacation. A true and correct copy of Plaintiff's proposed Second Amended Complaint is filed with this Motion as Exhibit B. Plaintiff exhausted administrative remedies through the Labor and Workforce Development Agency ("LWDA") prior to amending the Complaint to add a PAGA claim. Plaintiff filed a notice with the LWDA on February 14, 2023, setting forth the facts and theories of liability. Plaintiff sent amended notices on November 29, 2023 and December 6, 2023 to add additional claims to match the scope of the resolution at mediation and to clarify the scope of the claim period. A true and correct copy of the operative notice filed with the LWDA is being filed with this Motion as Exhibit C. Copies of the notices were also sent to Defendant via certified mail and the \$75.00 filing fee was remitted to the LWDA. There was no response by the LWDA regarding its intent to investigate the claims alleged in Plaintiff's notices for more than 65 days. As such, Plaintiff was authorized to commence a civil action under the PAGA.

4. Currently, there is no date set for a motion to certify the class and there is no trial date.

5. Defendant is represented in this matter by Cook Brown, LLP. From the beginning, Defendant has contested the merits of this case, the suitability of the case for class action or representative treatment, the manageability of the case at trial, and Plaintiff's ability to prove a violation in each pay period for each employee among other defenses and contentions they made challenging the propriety of this action. Defendant further contended, even assuming there was a finding supporting the imposition of PAGA penalties, that the Court would likely exercise its discretion to substantially reduce any such penalties owed based on evidence of good faith attempts to comply with California Labor Code obligations by Defendant. Notwithstanding its agreement to settle this matter, Defendant believes the practices Plaintiff is contending are unlawful either do not exist or, to the extent they do exist, fully comply with all state and federal employment laws with respect to Plaintiff and Class Members. Also, Defendant has contended that this matter is not appropriate for class certification outside of this proposed class settlement. For instance, Defendant contended that to the extent the hours recorded for Class Members did not capture all work performed or any meal periods that were missed, it did not have any knowledge of this because Defendant would have Class Members review

1 and sign their timesheets and certify that their hours were correct and that they had received all meal
2 and rest breaks. Defendant produced a policy it maintained requiring Class Members to report any
3 errors on time records to supervisors. In addition, Defendant produced written meal and rest period
4 policies it contended were legally compliant. Further, Defendant updated the format of wage
5 statements given to employees in July 2022 to ensure the pay periods and an employee ID or last four
6 of employees' social was on the statements. Defendant also changed its regular rate of pay calculation
7 in July 2022 and contended that after July 2022 there were no miscalculations for the regular rate of
8 pay. Finally, Defendant represented that approximately 90 out of 180 Class Members signed
9 arbitration agreements and that Class Members who signed arbitration agreements that waived their
10 ability to pursue claims on a class basis. The Class Members covered by the Agreement only include
11 employees who did not sign arbitration agreements containing a class action waiver.

12 6. Based on the expected testimony from Plaintiff and Class Members, a review of
13 Defendant's policies and procedures and other documents relating to the alleged claims, information on
14 the number of Class Members, Class Members' dates of employment, and a representative sample of
15 Class Members' payroll data, the scope of the potential damages to Plaintiff and Class Members in light
16 of the claims alleged, the uncertainty in the law with regard to certification, and the negotiations that
17 have taken place, I am convinced that the proposed settlement is in the best interest of the class. The
18 length and risks of trial and other normal perils of litigation that impact the value of the claims were also
19 considered and weighed in reaching the Agreement. In addition, I carefully considered the prospect of
20 potential class certification issues as well as the uncertainty of class certification, the difficulties of
21 complex litigation, and the lengthy process of establishing specific damages and various possible delays
22 and appeals in agreeing to the proposed settlement. I further considered the fact that penalties under the
23 PAGA could be substantially cut at the discretion of the Court even if Plaintiff was successful on
24 proving those claims and there was risk that a Court could find no willfulness in the failure to pay wages
25 at separation, which would eliminate the value of the waiting time penalty claim entirely. Overall, I
26 believe it is more beneficial to secure a guaranteed benefit to the class now rather than to proceed with
27 litigation and potentially obtain zero funds to the class due to legal or factual issues in the case.
28

1 7. My office, including the partners Galen T. Shimoda and Justin P. Rodriguez, our
2 paralegal, and myself, along with Plaintiff's assistance, thoroughly investigated the merits of the claims
3 and potential damages for such claims. The parties engaged in informal discovery and exchange of
4 documents, including a representative sampling of employee data, such as timecards, paystubs, payroll
5 data and relevant policies for the entirety of the statute of limitations applicable to the alleged claims.
6 The discovery covered all aspects of the asserted claims, including certification issues, merits issues,
7 damages, the scope and configuration of Class Members, the content and implementation of the wage
8 and hour policies at issue, issues relating to manageability concerns at trial, among other relevant areas.
9 From this production we were able to determine information critical to a reliable damages analysis such
10 as the average hourly rate, average daily hours worked, average number of workweeks and pay periods
11 that had potential violations based on the asserted claims, the frequency with which violations occurred
12 in a given week and/or pay period, and the number of former employees. This information allowed my
13 office to assess both liability and damages and create an accurate damages model. Plaintiff assisted in
14 all aspects of this litigation including providing factual information relating to Plaintiff's and Class
15 Members' employment conditions, providing a substantial number of documents, and answering
16 questions regarding Defendant's factual contentions in this matter. This was important because it
17 directly related to our ability to maintain this case as a class action and our ability to obtain a favorable
18 settlement for the class.

19 8. Throughout this litigation our office had numerous communications with Defendant's
20 Counsel discussing our respective positions. The parties engaged in mediation on October 9, 2023 using
21 an experienced mediator, Russ J. Wunderli, Esq. It was only after approximately eight months of
22 extensive, arm's length negotiations that the parties were able to reach a settlement, which only occurred
23 after a full-day mediation. The negotiations were at all times contentious and adversarial, though still
24 professional in nature.

25 9. The following represents the potential maximum recovery for each of Plaintiff's claims
26 based on my office's analysis of Defendant's relevant policies and the data produced by Defendant,
27 including a sample of time and payroll records for Class Members. There were 3,861 workweeks in the
28

1 Class Period (weeks worked by employees who did not sign arbitration agreements) and 5188 pay
2 periods in the PAGA Claim Period:

- 3 a) Minimum Wages: This claim is based on allegations that Defendant failed to pay Class
4 Members for all hours worked due to its failure to accurately record Class Members'
5 hours worked. This claim is also based on the allegation that Defendant required Class
6 Members to travel long distances to various jobsites and did not pay for all travel time.
7 At the time of mediation, the maximum possible damages for this claim based on
8 Defendant's payroll records was \$50,193. This was calculated based on an estimate of
9 one unpaid hour per week. This amount does not take into account any potential risks
10 with respect to Plaintiff proving the merits or damages. In order to be liable for off-the-
11 clock work, an employer must know or have reason to know it was occurring.
12 *Brinker Rest. Corp. v. Superior Ct.*, 53 Cal.4th 1004, 1051 (2012). Defendant produced
13 a written policy regarding reporting any timecard errors and also had Class Members
14 review their records and sign them to certify their accuracy. Defendant contends that
15 because Class Members certified their hours were correct, it had no knowledge of any
16 off-the-clock work to the extent any was performed. Defendant further contends that its
17 policy was to pay employees for any travel time exceeding 90 minutes, which it believes
18 was lawful. *See e.g.* DLSE Opinion Letter re: "Travel Time Pay for Employee With
19 Alternative Work Sites," 2003.04.2022 (the DLSE has expressly recognized that
20 employees in certain occupations, such as the construction industry, "by the nature of
21 the industry and occupation, are not assigned to a specific workplace and have a
22 reasonable expectation that they will be routinely required to travel reasonable distances
23 to job sites on a daily basis."). Taking these factors into account a more realistic range
24 of recovery for this claim is \$25,096.50 (50% reduction for risk) to \$37,644.75 (25%
25 reduction for risk).
- 26 b) Overtime & Double Time Wages: This claim is based on allegations that Defendant paid
27 Class Members different hourly rates within the same workday and/or workweek (due to
28 them working on public works jobs and non-public works jobs). Plaintiff alleges that

1 Defendant did not properly take into account the different rates paid when it calculated
2 Class Members regular rates of pay for the purpose of paying overtime. At the time of
3 mediation, the maximum possible damages for this claim based on Defendant's payroll
4 records was \$20,422.95 (for overtime) and \$6.18 (for double time). This was calculated
5 based on a violation rate found in the sample of 23.92% (for overtime) and 0.85% (for
6 double time). This amount does not take into account any potential risks with respect to
7 Plaintiff proving the merits or damages. Defendant contends it corrected its regular rate
8 of pay calculation in July 2022, which would eliminate a portion of the calculated
9 damages for these claims.

10 c) Sick Time: This claim is based on allegations that Defendant paid Class Members
11 different hourly rates within the same workday and/or workweek (due to them working
12 on public works jobs and non-public works jobs). Plaintiff alleges that Defendant did
13 not properly take into account the different hourly rates paid when it calculated Class
14 Members regular rates of pay for the purpose of paying sick time. At the time of
15 mediation, the maximum possible damages for this claim based on Defendant's payroll
16 records was \$127.47. This was calculated based on a violation rate found in the sample
17 of 0.62%. This amount does not take into account any potential risks with respect to
18 Plaintiff proving the merits or damages. Defendant contends it corrected its regular rate
19 of pay calculation in July 2022, which would eliminate a portion of the calculated
20 damages for these claims.

- 21 • Meal Period: This claim is based on allegations that Defendant did not provide Class
22 Members with all meal periods owed to them or to the extent meal periods were
23 provided there were occasions where they were not provided until after Class Members'
24 fifth hour of work. At the time of mediation, the maximum possible damages for this
25 claim based on Defendant's time and payroll records and anticipated Class Member
26 testimony was \$374,362.56. This amount was calculated based on an average of four
27 meal periods being available to Class Members each week and a 60% violation rate.
28 This amount does not take into account any potential risks with respect to Plaintiff

1 proving the merits or damages. Defendant produced written meal period policies and
2 contended that it provided Class Members with an opportunity to take meal periods and
3 that to the extent they were not taken or were taken late it was due to employee choice.
4 Defendant also disputed Plaintiff's estimated violation rate and argued that to the extent
5 there were any meal violations the frequency was much lower and that when it had
6 knowledge of violations premiums were paid. Taking these factors into account, a more
7 realistic range of recovery for this claim is \$224,617.54 to \$299,490.05 (20% to 40%
8 reduction).

- 9 • Rest Period: This claim is based on allegations that Defendant did not provide Class
10 Members with all rest periods owed to them. At the time of mediation, the maximum
11 possible damages for this claim based on records and anticipated Class Member
12 testimony was \$374,362.56. This amount was calculated based on an average of four
13 rest periods being available to Class Members each week and a 60% violation rate. It
14 can reasonably be assumed that the circumstances that created an employee's inability to
15 take a meal period on a particular day also would have interfered with their ability to
16 take a rest period. Thus, the estimated violation rate is the same for rest periods as it
17 was for meals. This amount does not take into account any potential risks with respect
18 to Plaintiff proving the merits or damages. Defendant produced written rest period
19 policies and contended that it provided Class Members with an opportunity to take rest
20 periods and that to the extent they were not taken it was due to employee choice.
21 Defendant also disputed Plaintiff's estimated violation rate and argued that to the extent
22 there were any rest violations the frequency was much lower. Taking these factors into
23 account, a more realistic range of recovery for this claim is \$224,617.54 to \$299,490.05
24 (20% to 40% reduction).
- 25 • Wage Statement: This claim is based on allegations that Defendant failed to include all
26 pay periods and employee ID numbers or the last 4 digits of their social security number
27 on wage statements. This claim is also derivative of the claims above with regarding to
28 Plaintiff's allegations that Defendant did not correctly state net and gross wages, total

1 hours worked and correct rates of pay on the wage statements. At the time of mediation,
2 the maximum possible damages for this claim based on Defendant's data was \$259,400.
3 This amount was calculated using a \$50 initial violation rate for the 5,188 pay periods in
4 the claim period. This amount does not take into account any potential risks with
5 respect to Plaintiff proving the merits or damages. The same risks identified above are
6 applicable to the derivative allegations of this claim. In addition, Labor Code section
7 226 requires a knowing and intentional violation and Defendant contends that to the
8 extent the wage statements it issued to Class Members were incorrect it was not
9 intentional. Defendant corrected the format of its wage statements in July 2022. Taking
10 these factors into account, a more realistic range of recovery for this claim is \$51,880 to
11 \$155,640 (40% to 80% reduction).

- 12 • Waiting Time: This claim is derivative of the failure to pay minimum wages, failure to
13 pay overtime, failure to pay sick time, and failure to provide meal and rest periods.
14 Thus, the same risks identified above apply to this claim. At the time of mediation, the
15 maximum possible damages for this claim based on the data and information provided
16 by Class Members was \$688,416. This amount was calculated based on information
17 from Defendant that there were 71 former employees. It was assumed that each
18 employee had some amount of wages owing to him or her and the penalty was
19 calculated using a full 30 days. This amount does not take into account any potential
20 risks with respect to Plaintiff proving the merits or damages. Labor Code section 203
21 requires that the failure to pay wages be willful in order for a waiting time penalty to be
22 appropriate. Defendant contends that it cannot be liable for waiting time penalties
23 because it has a good faith defense. There is substantial risk that Defendant's policies
24 and records would provide it with a good faith affirmative defense, which would
25 eliminate the value of this claim entirely. *See Diaz v. Grill Concepts Servs., Inc.*, 23
26 Cal.App.5th 859, 868 (2018). Taking these factors into account, it is possible this claim
27 would be eliminated entirely.
28

- 1 d) Reimbursement: This claim is based on allegations that Defendant required Class
2 Members to travel to jobsites using their personal vehicles, which at times were more
3 than one (1) hour to or from work without reimbursing them for mileage. It is also
4 based on allegations that Class Members had to use their personal cellphones for work.
5 At the time of mediation, the maximum possible damages for this claim was \$193,050.
6 This amount does not take into account any potential risks with respect to Plaintiff
7 obtaining certification or proving the merits or damages. This amount was calculated
8 estimating \$50 was not reimbursed each week (combination of personal cellphone use
9 and mileage). Defendant argues that this claim would not be certified because too many
10 individual issues of fact predominate. For example, Defendant contends it would
11 require the Court to scrutinize each Class Member's claimed expenses and whether they
12 were necessary and incurred in direct consequence of the discharge of the employee's
13 duties, whether the employee actually sought reimbursement from Defendant, and
14 whether Defendant reimbursed the expense. Defendant also contends that it provided
15 Class Members with company trucks and cellphones as necessary for employees' work.
16 Finally, Defendant produced a written reimbursement policy and contends that if any
17 necessary expenses were not reimbursed it was because Class Members did not request
18 reimbursement. Taking these factors into account, a more realistic range of recovery for
19 this claim is \$0 to \$96,525 (50% reduction).
- 20 e) Unpaid Accrued Vacation: This claim is based on allegations that at the time of Class
21 Members' termination, Defendant did not pay Class Members all of their accrued and
22 unused vacation and/or did not pay for such vacation days at the employee's final rate of
23 pay. At the time of mediation, the maximum possible damages for this claim was
24 \$57,368. This amount does not take into account any potential risks with respect to
25 Plaintiff obtaining certification or proving the merits or damages. This amount was
26 calculated estimating the 71 former employees were owed 20 hours of accrued vacation
27 at the average rate of pay (\$40.40). Defendant contends that this claim does not have
28 any merit. Defendant contends it paid PTO benefits on prevailing wage jobs through

1 hourly contributions to a voluntary employees' beneficiary association ("VEBA") trust
2 fund, which is permissible under state and federal law. *See* Cal. Labor Code §§ 1773.1;
3 29 CFR § 5.23. Defendant contends for each hour worked on prevailing wage jobs, it
4 made a PTO contribution, the amount of which was determined by an independent
5 actuary, to a VEBA trust fund. Then, at the end of employment, for employees who
6 have not worked enough hours to qualify for an additional PTO accrual and payout, the
7 hourly contributions made on behalf of that employee are disbursed. Defendant further
8 contends these contributions have been accepted by the DLSE in the past. Taking these
9 factors into account, a more realistic range of recovery for this claim is \$0 to \$28,684
10 (50% reduction).

11 f) PAGA: This claim is derivative of the Labor Code violations identified above and would
12 be subject to all the same risks as the underlying claims it is based on. Additionally,
13 based on our research, we did not find any prior Labor Commissioner or court decisions
14 that stated Defendant's practices and/or policies were improper. As such, a "subsequent
15 violation" may not be found for penalty calculation purposes, and the exposure analysis
16 here is based on an "initial violation" valuation being adopted by any fact finder if this
17 matter went to trial. *See Amaral v. Cintas Corp. No. 2*, 163 Cal.App.4th 1157, 1207-
18 1209 (2008). Based on Class Members' payroll data, the maximum total exposure for
19 this claim is \$2,940,957.60. This amount does not take into account any of the risks in
20 proving the merits of the underlying claims that the PAGA damages are based on. In
21 addition to the risks on the merits and disputes regarding the proper valuation of the
22 penalty amounts, I believe the Court may exercise its discretion to reduce PAGA
23 penalties in this case because a majority of the civil penalties sought would be in
24 addition to amounts owed for substantive violations, some of the violations are due to
25 technical non-compliance with the Labor Code, such as wage statement violations, and
26 Defendant produced legally compliant policies among other documents, that a Court
27 may find demonstrates a good faith attempt at compliance. Defendant also took steps to
28 remedy potential violations of the law by correcting its regular rate calculations and

1 modifying the format of its wage statements. Courts are statutorily authorized to use
2 discretion to reduce penalties and the range of discretion used varies substantially. *See*
3 *Thurman v. Bayshore Transit Mgmt., Inc.*, 203 Cal.App.4th 1112, 1135 (2012) (30%
4 reduction); *Fleming v. Covidien, Inc.*, 2011 U.S. DIST. LEXIS 154590, *9 (C.D. Cal.
5 2011) (82% reduction). The 82% reduction equates to roughly \$9-\$50 worth of civil
6 penalties per pay period per employee depending on the total potential value of the civil
7 penalty (*i.e.* \$50-\$250), which is more in line with actual awards based on my
8 experience and review of awards in other cases. Thus, even if using the maximum
9 values possible and setting aside risks of proving the claims on the merits, the total
10 exposure may be cut to approximately \$529,372.37 (82% reduction) to \$2,058,670.32
11 (30%) or lower. It is important to note that this discretionary reduction is completely
12 separate and in addition to any risks on the merits. Given the substantial risks associated
13 with the claims, we believe the amount that might ultimately be awarded under this
14 claim would be significantly lower than our maximum exposure calculation. Allocating
15 \$41,750 to the PAGA claims in this case is appropriate, especially in light of amounts
16 that Courts have approved as reasonable valuations in other cases. *See Nordstrom Com.*
17 *Cases*, 186 Cal.App.4th 576, 589 (2010) (approving \$0 allocation to the resolution of
18 PAGA claims based on their being disputed and being part of a class settlement which
19 was evaluated based on the terms of the agreement overall); *Junkersfeld v. Med. Staffing*
20 *Sols., Inc.*, 2022 WL 2318173, at *8 n.2 (E.D. Cal. 2022) (collecting cases with PAGA
21 settlement values ranging from .037%-1%); *Jennings v. Open Door Marketing, LLC*,
22 2018 WL 4773057, *9 (N.D. Cal. 2018) (approving settlement of PAGA claims at 0.6%
23 of total estimated value due to risk of no recovery); *Ruch v. AM Retail Grp., Inc.*, 2016
24 WL 5462451, *7 (N.D. Cal. 2016) (approving \$10,00 PAGA settlement allocation
25 where total PAGA penalty exposure was approximately \$5.2 million, or 0.2% of total
26 estimated value); *Davis v. Cox Commc'ns California, LLC*, 2017 U.S. Dist. LEXIS
27 63514, *1 (S.D. Cal. 2017) (preliminarily approving \$4,000 PAGA allocation in
28 \$275,000 settlement); *Moore v. Fitness Int'l, LLC*, 2014 U.S. Dist. LEXIS 8358, *5

(S.D. Cal. 2014) (approving \$2,500 PAGA allocation when attorneys' fees award alone amounted to \$200,000); *Jack v. Hartford Fire Ins. Co.*, 2011 U.S. Dist. LEXIS 118764, *6 (S.D. Cal. 2011) (approving \$3,000 PAGA allocation in \$1,200,000 settlement); *Singer v. Becton Dickinson & Co.*, 2010 U.S. Dist. LEXIS 53416, *2 (S.D. Cal. 2010) (approving \$3,000 PAGA allocation in \$1,000,000 settlement); *Hopson v. Hanesbrands Inc.*, 2009 U.S. Dist. LEXIS 33900, *9 (N.D. Cal. 2009) (approving \$1,500 PAGA allocation in \$1,026,000 settlement); *Syed v. M-I, L.L.C.*, 2017 U.S. Dist. LEXIS 24880, *34-35 (E.D. Cal. 2017) (approving \$100,000 PAGA allocation in a \$3,950,000 settlement even though PAGA exposure was calculated at \$53,600,000, or 0.2% of total estimated value); *Garcia v. Gordon Trucking, Inc.*, 2012 U.S. Dist. LEXIS 160052, at *7 (E.D. Cal. 2012) (approving \$10,000 PAGA allocation in a \$3,700,000 settlement); *Franco v. Ruiz Food Prod., Inc.*, 2012 WL 5941801, at *14 (E.D. Cal. 2012) (\$10,000 in PAGA payment from \$2,500,000 settlement fund); *Chu v. Wells Fargo Investments, LLC*, 2011 WL 672645, at *1 (N.D. Cal. 2011) (approving PAGA settlement payment of \$7,500 to the LWDA out of \$6.9 million common-fund settlement).

10. In summary, Plaintiff's gross recovery of \$417,500 under the Agreement equals approximately 8.4% of the maximum likely value of the claims in this matter and between 13.9% and 38.8% of the more realistic range of recovery. After deducting from the Gross Settlement Amount the proposed allocations for attorneys' fees (\$146,125) and costs (\$10,000)¹, any Enhancement Payment to the Class Representative (\$10,000), Settlement Administrator Costs (\$10,000), and the PAGA Payment to the LWDA (\$41,750), the net recovery under the Agreement, \$199,625, represents approximately 4.0% of the maximum likely value of the claims in this matter. The net recovery also represents between 6.7% and 18.6% of the more realistic range of recovery. The average net award is approximately \$2,169.84 (\$199,625/92 Class Members). I believe the Agreement represents a reasonable compromise of claims based on the legal and factual disputes in this case. The ability to secure a guaranteed settlement now and ensure Class Members receive some compensation, rather than

¹ This calculation uses the maximum cost potential under the Agreement for Class Counsel's costs and the Settlement Administrator's costs. The actual costs will likely be less with the difference being added to the Net Settlement Amount.

1 proceed to further litigation and potentially recover nothing, was a motivating factor in reaching this
2 Agreement.

3 11. In agreeing to represent Plaintiff and take on the case for all Class Members, our office
4 agreed to take this case on a contingency basis, meaning that we would take a percentage of any
5 settlement or judgment should we recover a monetary amount. We took a risk that we would not
6 recover any money in this matter if we were unsuccessful at trial. We also took on the risk that the case
7 may be subject to an unfavorable summary judgment ruling. However, we believe it is important to
8 make sure employees are able to find affordable representation in order to ensure that employers are
9 complying with all their legal obligations towards employees and paying employees all their hard-
10 earned wages.

11 12. I am a Senior Associate at Shimoda & Rodriguez Law, PC. Our law firm is a boutique
12 law practice that focuses primarily on employment litigation, emphasizing wage and hour litigation. I
13 attended and graduated college from U.C. Davis, receiving a Bachelor of Arts in Psychology. I
14 received my J.D. from the University of the Pacific McGeorge School of Law. I joined Shimoda &
15 Rodriguez Law, PC as a law clerk in February 2015 where I gained civil litigation experience working
16 on individual, class action and PAGA employment cases throughout law school. I also participated in
17 an employment law clinic in 2015 and 2016 that helps low-income workers by providing free legal
18 consultations, advising employees of their legal remedies on a variety of matters (*e.g.*, wage and hour,
19 discrimination/harassment, California leave laws, unemployment, workers' compensation, retaliation,
20 and wrongful termination, etc.) under the supervision of an attorney, preparing wage claims, and
21 providing representation in wage claims before the California Labor Commissioner. From 2016-2017,
22 I completed an externship at the Federal Public Defenders Office as a Certified Law Student where I
23 obtained discovery, completed legal research, drafted motions, negotiated plea deals, represented
24 clients in a variety of hearings (*e.g.*, arraignments, motion hearings, sentencing hearings, etc.), and
25 defended a client against five misdemeanor charges in a jury trial in the United States District Court for
26 The Eastern District of California. I was also a member of the nationally recognized McGeorge Mock
27 Trial Team and went on to coach a high school Mock Trial team in 2018 after graduating from law
28 school. In May 2017, I graduated from the University of the Pacific, McGeorge School of Law with

Great Distinction and was inducted into the Order of the Coif, graduating in the top 10% of my class. I received the Witkin Award for Academic Excellence in Legal Research and Writing, Civil Procedure, Bankruptcy, and Criminal Procedure. From 2020 to present, I have been recognized as a Super Lawyer (Rising Star). I have been a member of the executive committee of the Sacramento County Bar Association Labor & Employment Section since January 2020, serving as Co-Chair of the committee in 2021. I have over seven years of experience working on civil litigation and employment law matters. Most of that experience has been specific to analyzing and litigating wage and hour claims. As an associate, I have worked on a variety of individual, class action, and PAGA cases involving wage and hour claims, such as failure to pay overtime, failure to pay minimum wages, failure to provide meal and rest periods, failure to pay reimbursement expenses, unlawful deductions, failure to keep accurate time records, failure to provide paid sick leave, failure to pay all wages upon separation, unfair competition, breach of contract, independent contractor misclassification, and salaried misclassifications. Some of the class action and/or PAGA cases I am litigating and/or have litigated as lead or co-counsel include the following:

- *Arosemena v. Ranchhodrai, Inc., et al.*, Case No. STK-CV-UOE-2019-15963 (San Joaquin Sup. Ct.);
- *Arroyo v. Epic Home Solar*, Case No. 34-2021-00310634 (Sac. Sup. Ct.);
- *Balli v. Brown Box Investments, Inc., et al.*, Case No. 34-2018-00232656 (Sac. Sup. Ct.);
- *Barkhousen, et al. v. Bank of Stockton*, Case No. STK-CV-UOE-2019-17145 (San Joaquin Sup. Ct.);
- *Barrios v. American Property Management, Inc.*, Case No. 1:18-cv-00352-AWI-SKO (E.D. Cal.);
- *Callahan v. Creative Alternatives, Inc., et al.*, Case No. 2027518 (Stanislaus Sup. Ct.);
- *Collazo v. T.O.P. Marketing Group, Inc.*, Case No. 34-2022-00314092 (Sac. Sup. Ct.);
- *Cristobal v. BAT Residential Services, Inc.*, Case No. FCS056331 (Solano Sup. Ct.);
- *Coronado v. MGD, Inc.*, Case No. STK-CV-UOE-2021-893 (San Joaquin Sup. Ct.);
- *Estrada v. MAD Security Services, Inc.*, Case No. 34-2021-00300627 (Sac. Sup. Ct.);
- *Ferreyra v. Point Digital Finance, Inc., et al.*, Case No. 20CV373776 (Santa Clara Sup. Ct.);

- *Finance of America Wage And Hour Cases*, Case No. JCCP 5081 (Orange County Sup. Ct.);
- *Gomez, et al. v. Kleary Masonry, Inc.*, Case No. 34-2020-00278067 (Sac. Sup. Ct.);
- *Gonzalez v. Northcentral Pizza, LLC, et. al.*, Case No. 34-2019-00252018 (Sac. Sup. Ct.);
- *Gordon, et al. v. Hospice Source, LLC*, Case No. 34-2019-00250022 (Sac. Sup. Ct.);
- *Green v. Warden Security Associates, Inc.*, Case No. 22CV396140 (Santa Clara Sup. Ct.);
- *Hampton v. Unlimited Security Specialists, Inc.*, Case No. CV2021-2130 (Yolo Sup. Ct.);
- *Hercules, et al. v. Maximus Services, LLC*, Case No. 34-2019-00268385 (Sac. Sup. Ct.);
- *Insixiengmay v. Hyatt Corporation*, Case No. 2:18-cv-02993-TLN-DB (E.D. Cal);
- *Kurtz v. Perimeter Security Group, LLC, et al.*, Case No. CU19-083650 (Nevada Sup. Ct.);
- *Leong-Call v. MRB Foods, Inc.*, Case No. 34-2020-00287486 (Sac. Sup. Ct.);
- *Magat v. Medical Care Professionals, Inc., et. al.*, Case No. SCV0042579 (Placer Sup. Ct.);
- *Mayorga v. Brown Strauss, Inc.*, Case No. STK-CV-UOE-2020-0010906 (San Joaquin Sup. Ct.);
- *McGhee v. Salute Incorporated*, Case No. 34-2022-00315317 (Sac Sup. Ct.);
- *McMahon v. Airco Mechanical, Inc.*, Case No. 34-2019-00259269 (Sac. Sup. Ct.);
- *Meals v. Grass Valley Extended Care, Inc., et al.*, Case No. CU19-083606 (Nevada Sup. Ct.);
- *Munoz v. Wilmor And Sons Plumbing And Construction*, Case No. 34-2021-00306609 (Sac. Sup. Ct.);
- *Ruiz v. CTE Cal, Inc.*, Case No. 34-2020-00289168 (Sac. Sup. Ct.);
- *Saavedra, et al. v. SMF Global, Inc.*, Case No. 34-2018-00243363 (Sac. Sup. Ct.);
- *Scarano v. J.R. Putman, Inc., et al.*, Case No. 34-2018-00244753 (Sac. Sup. Ct.);
- *Scoggins, et al. v. Energy Star Construction, Inc.*, Case No. 34-2018-00243048 (Sac. Sup. Ct.);
- *Strawn v. Bridgestone Retail Operations, LLC*, Case No. 34-2018-00242049 (Sac. Sup. Ct.);
- *Sullivan v. National Response Corporation*, Case No. 34-2018-00244757 (Sac. Sup. Ct.);
- *Tracy v. Von Housen's Sacramento, Inc.*, Case No. 34-2020-00282778 (Sac. Sup. Ct.);
- *Uribe v. Ecoguard Pest Management, Inc.*, Case No. 34-2021-00300650 (Sac. Sup. Ct.);

- 1 • *Vasquez v. Chriswell Home Improvements, Inc.*, Case No. 34-2021-00305938 (Sac. Sup.
2 Ct.);
- 3 • *Villarruel, et al. v. General Produce Company, et al.*, Case No. 34-2021-00311463 (Sac.
4 Sup. Ct.);
- 5 • *Walker v. Yan Kalika Dental Corporation*, Case No. 34-2021-00305106 (Sac. Sup. Ct.); and
- 6 • *Webb v. Professional Healthcare At Home, LLC*, Case No. FCS055317 (Solano Sup. Ct.).

7 13. The preceding list of cases does not include those where, for a variety of reasons, the
8 case was initially filed as a class and/or PAGA action, but did not maintain that status through the end
9 of the case.

10 14. The partner, Justin P. Rodriguez, Esq. also worked with me on this matter and was
11 critical in assisting with all aspects of the litigation of this case. Mr. Rodriguez attended and graduated
12 college from U.C. Davis, receiving a Bachelor of Arts in Philosophy and the Departmental Citation for
13 Academic Achievement in the Philosophy program. He was one of only two recipients of this award
14 out of the entire Philosophy Department. After U.C. Davis, Mr. Rodriguez attended the University of
15 the Pacific, McGeorge School of Law, graduating in 2011 and receiving a Juris Doctorate. He
16 graduated in the top 20% of his class and was a member of the Traynor Honor Society at McGeorge.
17 Other academic achievements of his include receiving a Witkin Award (top grade) in his legal research
18 and writing course, a Witkin Award in complex civil litigation, being a member of the Dean's List from
19 2008 to 2011, being a Legislative Staff Writer for the *McGeorge Law Review* from 2009–2010, being
20 an Associate Comment Editor for the *Pacific McGeorge Global Business & Development Law Journal*
21 from 2010–2011, and being selected as a Sacramento County Bar Association Diversity Fellow in
22 2009. Mr. Rodriguez was also a member of the Employment and Labor Law Society and an officer for
23 the Latino Law Students Association from 2009 to 2010.

24 15. Mr. Rodriguez was an associate of the Shimoda Law Corp from 2011 to 2016 and
25 became a partner in 2017. Shimoda Law Corp. became Shimoda & Rodriguez Law, PC, in 2022.
26 Since 2017, he has received an AV Preeminent rating from Martindale-Hubbell for his legal ability and
27 ethical standards. From 2018 to present, he has been recognized as a Super Lawyer (Rising Star). Mr.
28 Rodriguez has been a panel speaker and presented a number of seminars covering issues wage and hour

litigation in general and complex class and PAGA litigation in particular. These engagements include the following: (1) *Epic Systems*, PAGA, and the Future of Employment Arbitration in California (Sacramento County Bar Assoc., Sept. 2018); (2) Class Actions and PAGA Claims (Assoc. of Defense Counsel of Northern California & Nevada, Jul. 2020); (3) Mediation: The Experienced Trial Lawyers Perspective (Sacramento County Bar Assoc., Sept. 2020); (4) How to Become a Pivotal Part of Any Wage and Hour Practice Group (Sacramento County Bar Assoc., Mar. 2021); (5) Emerging Trends and Issues Relating to Arbitration and PAGA Claims in a Post-*Viking River Cruises* World (Sacramento County Bar Assoc., Nov. 2022). Mr. Rodriguez was elected to the Sacramento County Bar Association Labor and Employment Law Section's executive committee in 2019 and was the Chair of the executive committee for 2022. Mr. Rodriguez has also been a member of the Presiding Judge Civil Law Advisory Committee for Sacramento County Superior Court since August 2020. His practice focuses on complex civil litigation, including wage and hour class actions, PAGA claims, and Fair Labor Standards Act ("FLSA") claims. He is actively involved in most of the complex litigation handled by our firm. Class and/or PAGA actions he has litigated or is currently litigating include, but is not limited to, the following:

- *Aanerud v. Neumann Ltd., et al.*, Case No. 34-2014-00169324 (Sac. Sup. Ct.);
- *Adams-Angway v. Placer Title Company, et al.*, Case No. SCV0040845 (Placer Sup. Ct.);
- *Adewumi v. GHS Interactive Security, LLC*, Case No. 34-2017-00210768 (Sac. Sup. Ct.);
- *Arrington v. Capital Express Lines, Inc., et al.*, Case No. 34-2012-00134195 (Sac. Sup. Ct.);
- *Aslam v. American Custom Private Security, Inc.*, Case No. STK-CV-UOE-2018-0012080 (San Joaquin Sup. Ct.);
- *Aslam v. Cypress Security, LLC*, Case No. 34-2017-00220143 (Sac. Sup. Ct.);
- *Aslam v. Surveillance, Security, Inc.*, Case No. 34-2017-00220142 (Sac. Sup. Ct.);
- *Azzolino v. Brake Masters of Sacramento, LLC, et al.*, Case No. 34-2017-00218293 (Sac. Sup. Ct.);
- *Barkhausen v. Bank of Stockton*, Case No. STK-CV-UOE-2019-17145 (San Joaquin Sup. Ct.);
- *Benak v. MDStat Urgent Care, Inc.*, Case No. 34-2015-00188181 (Sac. Sup. Ct.);

- *Bigornia v. Quest Diagnostics Clinical Laboratories, Inc., et al.*, Case No. 34-2019-00271174 (Sac. Sup. Ct.);
- *Blig v. Medical Management International, Inc.*, Case No. 34-2017-00213906 (Sac. Sup. Ct.);
- *Caguioa, et al. v. Fortune Senior Enterprises, et al.*, Case No. 34-2014-00171831 (Sac. Sup. Ct.);
- *Camacho, et al. v. Z Street, Inc., d.b.a. Tower Café, et al.*, Case No. 34-2014-00163880 (Sac. Sup. Ct.);
- *Castorena v. Flowmaster, Inc.*, Case No. CV18-2191 (Yolo Sup. Ct.);
- *Cannon v. Miller Event Management, Inc., et al.*, Case No. 34-2014-00168103 (Sac. Sup. Ct.);
- *Carr, et al. v. CableCom, LLC*, Case No. 34-2017-00212739 (Sac. Sup. Ct.);
- *Chace v. Daisy Holdings, LLC, dba Pine Creek Care Center, et al.*, Case No. 34-2017-00209613 (Sac. Sup. Ct.);
- *Clamens-Hollenback v. Atterro, Inc.*, Case No. 17-CV-305535 (Santa Clara Sup. Ct.);
- *Cress, et al. v. Mitsubishi Chemical Carbon Fiber and Composites, Inc.*, Case No. 34-2017-00222101 (Sac. Sup. Ct.);
- *De Arcos v. Amware Pallet Services, LLC*, Case No. CV-17-629 (Yolo Sup. Ct.);
- *Ferreyra v. Point Digital Finance, Inc., et al.*, Case No. 20CV373776 (Santa Clara Sup. Ct.);
- *Foye v. The Golden 1 Credit Union*, Case No. 34-2018-00235003 (Sac. Sup. Ct.);
- *Garcia v. A-L Financial Corp.*, Case No. 34-2014-00171831 (Sac. Sup. Ct.);
- *Garcia v. Royal Plywood Company, LLC, et al.*, Case No. 34-2017-00221627 (Sac. Sup. Ct.);
- *Gomes v. Progressive Casualty Insurance Company*, Case No. 34-2018-00241979 (Sac. Sup. Ct.);
- *Gomez v. Mayflower Farms Incorporated, et al.*, Case No. CV24157 (Colusa Sup. Ct.);
- *Gilliam v. Matrix Energy Services, Inc.* Case No. RG 11592345 (Alameda Sup. Court);
- *Gonzalez v. Northcentral Pizza, LLC, et al.*, Case No. 34-2019-00252018 (Sac Sup. Ct.);
- *Gordon, et al. v. Hospice Source, LLC, et al.*, Case No. 34-2019-00250022 (Sac. Sup. Ct.);

- *Gotts v. John L. Sullivan Chevrolet, Inc.*, Case No. 34-2018-00231576 (Sac Sup. Ct.);
- *Hartwell v. Techforce Telecom, Inc.*, Case No. 39-2014-00307197 (San Joaquin Sup. Ct.);
- *Hellum v. AI Protective Services, LLC, et al.*, Case No. 34-2018-00234449 (Sac. Sup. Ct.);
- *Hercules v. Maximus Services, LLC, et al.*, Case No. 34-2019-00268385 (Sac Sup. Ct.);
- *Hernandez v. Snyir, Inc.*, Case No. 34-2017-00207641 (Sac. Sup. Ct.);
- *Heinz v. Wright Tree Services*, Case No. 34-2012-00131949 (Sac. Sup. Ct.);
- *Hoover v. Mom365*, Case No. 2:17-cv-01328-TLN-CKD (E.D. Cal.);
- *Insixiengmay v. Hyatt Corporation, et al.*, Case No. 2:18-cv-02993-TLN-DB (E.D. Cal.);
- *Josol v. Dial Medical Corp.*, Case No. 34-2008-00010040 (Sac. Sup. Ct.);
- *McMahon v. Airco Mechanical, Inc.*, Case No. 34-2019-00259269 (Sac. Sup. Ct.);
- *Muhieddine v. KBA Docusys, Inc.*, Case No. 34-2014-00164720 (Sac. Sup. Ct.);
- *Nguyen v. Cardinal Health Pharmacy Services, LLC, et al.*, Case No. 34-2019-00263185 (Sac. Sup. Ct.);
- *Prasad v. D. G. Smith Enterprises, Inc.*, Case No. 34-2017-00215046 (Sac. Sup. Ct.);
- *Ralston v. JMJ Incorporated, Inc. et al.*, Case No. 34-2017-00217047 (Sac. Sup. Ct.);
- *Roberts v. CableCom, LLC*, Case No. 34-2017-00212739 (Sac. Sup. Ct.);
- *Robinson v. West of Chicago Restaurants, Inc., dba Chicago Fire*, Case No. 34-2010-00082201 (Sac Sup. Ct.);
- *Salas, et al. v. Joint Ventures, LLC, et al.*, Case No. 34-2018-00227493 (Sac. Sup. Ct.);
- *Salmon v. Ovation Fanfare, L.P., et al.*, Case No. 34-2018-00244749 (Sac. Sup. Ct.);
- *Scarano v. J.R. Putman, Inc.*, Case No. 34-2018-00244753 (Sac. Sup. Ct.);
- *Smith v. Greyhound Lines, Inc.*, Case No. 34-2017-00219188 (Sac. Sup. Ct.);
- *Sullivan v. National Response Corporation*, Case No. 34-2018-00244757 (Sac. Sup. Ct.);
- *Talent v. Leslie's Poolmart, Inc.*, Case No. 34-2012-00128539 (Sac. Sup. Ct.);
- *Thornton v. McConnell Jones Lanier & Murphy LLP*, Case No. 34-2017-00211553 (Sac. Sup. Ct.);
- *Watson v. Quarter At A Time, LLC*, Case No. 34-2017-00217570 (Sac. Sup. Ct.); and
- *Willis v. Premier Pools, Incorporated*, Case No. 34-2017-00211710 (Sac. Sup. Ct.).

1 16. The preceding list of cases does not include those where, for a variety of reasons, the
2 case was initially filed as a class and/or PAGA action, but did not maintain that status through the end
3 of the case.

4 17. The partner, Galen T. Shimoda, Esq. also assisted with this case. Mr. Shimoda
5 graduated from the University of Utah in 2000 with a B.S. in Business Management and a B.A. in
6 Asian Studies, with a minor in Japanese language. He then attended and graduated from the University
7 of the Pacific, McGeorge School of Law and received his J.D. degree in 2003. He graduated from
8 McGeorge in the top 5% of his class and was a member of the Order of the Coif and Traynor Honor
9 Society. Since graduating from McGeorge, he has authored a number of employment law articles for
10 journals and regularly publishes articles on our firm's website.

11 18. He has been a regular panel speaker for the CEB (Continuing Education of the Bar)
12 Employment Review seminars from 2014 to the present. His speaking engagements include the
13 following: 1) Lorman Military Leave Law Speaker; 2) Restaurant Association Speaker at Annual
14 Seminar (Los Angeles); 3) Federal Bar Association, Sacramento Chapter: 2015 Amendments to the
15 Federal Rules of Civil Procedure (Mar. 30, 2016); 4) CEB – Employment Law Practice: 2016 Year in
16 Review (Jan. 20, 2017); 5) CEB – Employment Law Practice: 2015 Year in Review (Jan. 22, 2016); 6)
17 CEB – Employment Law Practice: Year in Review (2014) (Jan. 9, 2015); 7) CEB - Employment Law
18 Practice: Year in Review (2013) (Jan. 10, 2014); 8) Sacramento County Bar Association - Class
19 Actions from the Trenches: Real World Experiences from the Plaintiff and Defense Bar (Feb. 21,
20 2012); 9) Sacramento Employer Advisory Council – Wage and Hour Workshop: Going Beyond the
21 Exemption Discussion (Apr. 7, 2016); 10) Sacramento Employer Advisory Council - Wage & Hour
22 Panel and AB 1825 Training: Updates on California's New Wage Laws and Manager Compliance
23 Training (Apr. 25, 2017); 11) Sacramento County Bar Association, Labor and Employment Section –
24 PAGA Representative Litigation: Emerging Trends and Issues (May 17, 2016); 12) Sacramento
25 Business Journal Panel – Overtime Rules (Jun. 23, 2016); 13) Association of Defense Counsel of
26 Norther California & Nevada - Employment Law Update – Do the Math: Calculation Exposure and
27 Damages in Wage and Hour Cases (Aug. 12, 2016); 14) California Employment Lawyers Association -
28 PAGA Today and PAGA Tomorrow: Moderate-Advanced Issues In PAGA Litigation (Oct. 20, 2017);

1 15) California Employment Lawyers Association Advanced Wage and Hour Seminar – Better Know a
2 Venue Roundup (May 17, 2019). He has been AV rated by Martindale Hubbell since 2013, was
3 recognized as a Super Lawyer (Rising Star) from approximately 2009 to 2013 and was recognized as a
4 Super Lawyer from 2014 to present.

5 19. He has practiced law in California since being admitted to the State Bar in 2003,
6 litigating wage and hour class actions and individual wage and hour litigation among other cases. He
7 began practicing class action law on the defense side at the firm of Orrick, Herrington & Sutcliffe LLP.
8 He then switched to plaintiff class action work in 2005. His class action experience is in wage and hour
9 law. He has litigated several class action cases in California State and Federal Courts, including up to
10 certification, settlement, preliminary and final approval, and disbursement of monies, and has been
11 found to be satisfy the adequacy requirements for class counsel. Some of the class action and/or PAGA
12 cases he is litigating and/or has litigated as lead or co-counsel over the past nineteen (19) years include,
13 but are not limited to, the following:

- 14 • *Aanerud v. Neumann Ltd., et al.*, Case No. 34-2014-00169324 (Sac. Sup. Ct.);
- 15 • *Acosta v. Acosta Sales, LLC, et al.*, Case No. 2:11-CV-01796 (C.D. Cal.);
- 16 • *Atchley v. Blaggs Food Service, LLC*, 34-2017-0215930 (Sac. Sup. Ct.);
- 17 • *Adewumi v. GHS Interactive Security, LLC*, Case No. 34-2017-00210768 (Sac. Sup. Ct.);
- 18 • *Arnall v. North American Merchandising Service Inc.*, Case No. 06AS01439 (Sac. Sup. Ct.);
- 19 • *Arrington v. Capital Express Lines, Inc., et al.*, Case No. 34-2012-00134195 (Sac. Sup. Ct.);
- 20 • *Aslam v. Cypress Security, LLC*, Case No. 34-2017-00220143 (Sac. Sup. Ct.);
- 21 • *Aslam v. Surveillance, Security, Inc.*, Case No. 34-2017-00220142 (Sac. Sup. Ct.);
- 22 • *Azzolino v. Brake Masters of Sacramento, LLC, et al.*, Case No. 34-2017-00218293 (Sac.
23 Sup. Ct.);
- 24 • *Benak v. MDStat Urgent Care, Inc.*, No. 34-2015-00188181 (Sac. Sup. Ct.);
- 25 • *Blig v. Medical Management International, Inc.*, Case No. 34-2017-00213906 (Sac. Sup.
26 Ct.);
- 27 • *Caguioa, et al. v. Fortune Senior Enterprises, et al.*, Case No. 34-2014-00171831 (Sac. Sup.
28 Ct.);

- 1 • *Camacho, et al. v. Z Street, Inc., d.b.a. Tower Café, et al.*, Case No. 34-2014-00163880 (Sac.
2 Sup. Ct.);
- 3 • *Carlos v. Abel Mendoza, Inc., et al.*, Case No. 34-2016-00195806 (Sac. Sup. Ct.);
- 4 • *Cannon v. Miller Event Management, Inc., et al.*, Case No. 34-2014-00168103 (Sac. Sup.
5 Ct.);
- 6 • *Carr et al. v. CableCom, LLC*, Case No. 34-2017-00212739 (Sac. Sup. Ct.);
- 7 • *Chace v. Daisy Holdings, LLC, dba Pine Creek Care Center, et al.*, Case No. 34-2017-
8 00209613 (Sac. Sup. Ct.);
- 9 • *Clamens-Hollenback v. Atterro, Inc.*, Case No. 17-CV-305535 (Santa Clara Sup. Ct.);
- 10 • *Colbert v. American Home Craft Inc.*, Case No. 05AS05012 (Sac. Sup. Ct.);
- 11 • *De Arcos v. Amware Pallet Services, LLC*, Case No. CV-17-629 (Yolo Sup. Ct.)
- 12 • *Diosdado v. Nor-Cal Venture Group, Inc., et al.*, Case No. STK-CV-UOE-2020-0008242
13 (San Joaquin Sup. Ct.);
- 14 • *Dugue v. Sierra Forever Families, et al.*, Case No. 34-2017-00210770 (Sac. Sup. Ct.);
- 15 • *Fadhl v. Siemens Healthcare Diagnostics, Inc., et al.*, Case No. 34-2017-00209518 (Sac.
16 Sup. Ct.);
- 17 • *Fujimoto v. Nabe-Ya, Inc., et al.*, Case No. 20CV01255 (Butte Sup. Ct.);
- 18 • *Garcia v. A-L Financial Corp.*, Case No. 34-2014-00171831 (Sac. Sup. Ct.);
- 19 • *Gerard v. Les Schwab Tires Center of California, Inc.*, Case No. 34-2007-30000003 (Sac.
20 Sup. Ct.);
- 21 • *Gomez v. Mayflower Farms Incorporated, et al.*, Case No. CV24157 (Colusa Sup. Ct.);
- 22 • *Gilliam v. Matrix Energy Services, Inc.* Case No. RG 11592345 (Alameda Sup. Court);
- 23 • *Hartwell v. Techforce Telecom, Inc.*, Case No. 39-2014-00307197 (San Joaquin Sup. Ct.);
- 24 • *Hernandez et al. v. MP Nexlevel, LLC et al*, Case No. 3 :16-cv-03015-JCS (N.D. Cal.);
- 25 • *Hernandez v. Snyir, Inc.*, Case No. 34-2017-00207641 (Sac Sup. Ct.);
- 26 • *Heinz v. Wright Tree Services*, Case No. 34-2012-00131949 (Sac. Sup. Ct.);
- 27 • *Hoover v. Mom365*, Case No. 2:17-cv-01328-TLN-CKD (E.D. Cal.);
- 28 • *James v. Language World Services, Inc., et al.*, Case No. 34-2020-00279929 (Sac. Sup. Ct.);

- *Josol v. Dial Medical Corp.*, Case No. 34-2008-00010040 (Sac. Sup. Ct.);
- *Koretsky v. Furniture USA, Inc.*, Case No. 34-2014-00172142 (Sac. Sup. Ct.);
- *Muhieddine v. KBA Docusys, Inc.*, Case No. 34-2014-00164720 (Sac. Sup. Ct.);
- *Massey v. V3 Electric, Inc., et al.*, Case No. 34-2019-00263666 (Sac. Sup. Ct.);
- *Miller v. Caldwell Transportation Company, LLC, et al.*, Case No. 34-2018-00234954 (Sac. Sup. Ct.);
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- *Pickens v. Elica Health Centers*, Case No. 34-2016-00200382 (Sac. Sup. Ct.);
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- *Ralston v. JMJ Incorporated, Inc. et al.*, Case No. 34-2017-00217047 (Sac. Sup. Ct.);
- *Rickwalt v. Direct Reconditioning, LLC, et al.*, Case No. 34-2015-00175642 (Sac. Sup. Ct.);
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- *Valencia v. Lowbrau Bier Garten, LLC, et al.*, Case No. 34-2019-00258038 (Sac Sup. Ct.);
- *Watson v. Quarter At A Time, LLC*, Case No. 34-2017-00217570 (Sac. Sup. Ct.);
- *Williams v. Civic Development Group*, Case No. 06AS00267 (Sac. Sup. Ct.); and
- *Willis v. Premier Pools, Incorporated*, Case No. 34-2017-00211710 (Sac. Sup. Ct.).

The preceding list also does not include those cases where, for various reasons, the case was filed as a class action and/or PAGA action, but did not maintain that status through the end of the case.

20. In connection with any final approval hearing, I will be seeking attorneys' fees and costs, an Enhancement Payment to the Class Representative, and Settlement Administrator Costs as set

1 forth in the Agreement. I will be requesting attorneys' fees and costs pursuant to the common fund
2 doctrine as I believe it to be applicable to the present case pursuant to *Serrano v. Priest*, 20 Cal.3d 25,
3 34-35 (1977), *Laffitte v. Robert Half Internat. Inc.*, 1 Cal.5th 480 (2016), and *Paul, Johnson, Alston &*
4 *Hunt v. Graulity*, 886 F.2d 268, 271 (9th Cir. 1989). The facts and case law supporting the requested
5 amounts will be set forth in the final approval motion, including information for the Court to perform a
6 lodestar cross check of the requested attorney's fees, quantify the amount of time spent by Plaintiff on
7 this case and any further risks and/or burdens incurred as a result of acting as Class Representative, an
8 updated declaration in support of actual litigation costs and itemized cost spreadsheet, and declaration
9 from the Settlement Administrator detailing the work performed and Settlement Administrator Costs
10 incurred. My firm's expected costs through final approval are not expected to exceed \$10,000.
11 Attached as Exhibit E is a true and correct copy of the costs incurred prior to the filing of this Motion
12 and the expected costs incurred through the final approval and fairness hearing. Any difference in the
13 awarded fees and costs, Class Representative's Enhancement Payment, and Settlement Administrator
14 Costs and the amounts allocated for each under the Agreement will be added back to the Net Settlement
15 Amount and distributed pro rata to Class Members.

16 21. I have used several class action administrator companies in the wage and hour class
17 actions I have resolved in the past and believe Apex Class Action will provide the best service to
18 administer the proposed class settlement. The CEO of Apex Class Action, Sean Hartranft, has worked
19 in the administration industry for a decade and utilizes case managers with considerable experience in
20 the field. Apex Class Action has procedures in place to protect the security of class data as well as
21 insurance. Apex Class Action has provided a quote for the estimated maximum cost of administering
22 the class settlement of approximately \$5,900. A true and correct copy of a cost estimate provided by
23 Apex Class Action along with information about their data procedures and insurance is filed with this
24 Motion as Exhibit D. This is only an estimate, and final pricing may vary depending on the issues, if
25 any, that arise during the administration of the settlement. However, the difference between the actual,
26 lesser costs and \$10,000, if any, will be paid to the Participating Class Members on a pro rata basis.

27 22. A copy of the Agreement and the entire Motion was submitted to the LWDA for review
28 at the same time the Motion was submitted to the Court pursuant to California Labor Code section

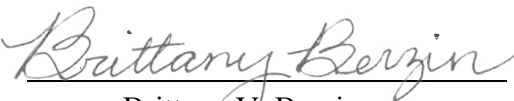
1 2699(1)(2). A true and correct copy of documents demonstrating the settlement documents were
2 provided to the LWDA and that the LWDA has confirmed receipt are being filed with this Motion as
3 Exhibit G.

4 23. A true and correct copy of the proposed Notice of Settlement is being filed with this
5 Motion as Exhibit F.

6 24. The designated *cy pres* beneficiary in this case is Sacramento Food Bank and Family
7 Services. Only those funds that remain from uncashed settlement checks will be sent to the *cy pres*
8 beneficiaries pursuant to section 5.6 of the Agreement.

9 25. I have spoken with every other attorney at my firm to determine whether they have any
10 relationship with the proposed *cy pres* beneficiary. No attorney at my firm as done any work, volunteer
11 or otherwise with Sacramento Food Bank and Family Services. Neither my firm, myself, Mr. Rodriguez
12 nor Mr. Shimoda have received any compensation, direct or indirect, for designating Sacramento Food
13 Bank and Family Services California as a *cy pres* beneficiary.

14 I declare under penalty of perjury under the laws of the State of California that the foregoing is
15 true and correct. Executed on _____ in Elk Grove, California.

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17 
18 Brittany V. Berzin
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Attorneys for Plaintiff MAURECE MARTIN

SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO

MAURECE MARTIN, individually and on
behalf of all other similarly situated
employees,

Plaintiff,

vs.

WESTERN ENGINEERING
CONTRACTORS, INC., a California
Corporation; and DOES 1 to 100, inclusive,

Defendants.

Case No. 34-2023-00334816

*Assigned for All Purposes to Hon. Jill Talley,
Department 23*

CLASS ACTION

**DECLARATION OF MAURECE MARTIN IN
SUPPORT OF PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT**

Reservation No. A-334816-001

Date: March 29, 2024
Time: 9:00 a.m.
Dept.: 23
Judge: Hon. Jill Talley

Filed: February 15, 2023
FAC Filed: May 25, 2023
Trial Date: None set

1 I, Maurece Martin, declare:

2 1. I am a competent adult, I have personal knowledge of the facts set forth in this
3 declaration, and I am making this declaration on behalf of myself, as a named plaintiff, and in support
4 of Plaintiff's Motion for Preliminary Approval of Class Action and PAGA Settlement.

5 2. I worked for Defendant Western Engineering Contractors, Inc. ("Defendant") from
6 approximately April 2, 2021 to April 16, 2021, February 11, 2022 to February 15, 2022, and March 4,
7 2022 to May 16, 2022 as a non-exempt employee. I was subject to all of Defendant's policies and
8 practices that have been alleged as unlawful in the Complaint and the notice sent to the Labor and
9 Workforce Development Agency, including the following: failure to record and pay all hours worked,
10 failure to pay overtime, failure to pay minimum wages, failure to provide meal and rest periods or pay
11 premiums in lieu thereof, failure to provide accurate wage statements, failure to properly calculate the
12 regular rate of pay for paid sick leave and overtime purposes, failure to timely pay final wages, failure
13 to reimburse expenses, failure to pay accrued vacation, and unfair competition.

14 3. I have actively participated in the litigation of this case for the benefit of all Class
15 Members. My attorneys explained to me the risks and benefits of bringing a class action and a claim
16 under the Private Attorneys General Act ("PAGA"). I understood that pursuing the case as a class and
17 PAGA action meant that it would take substantially longer than pursuing my claims individually,
18 whether in Court or with the California Labor Commissioner, and that I risked getting nothing in the
19 end, but I believed it was important to make sure that Defendant followed the law for everyone. I
20 understood that I took on the risk, both professionally and financially, in pursuing the case as a class
21 and PAGA action rather than pursuing my claims individually, including the risk of having to pay
22 Defendant's costs if we were unsuccessful in bringing our claims.

23 4. During the course of this litigation, I have given detailed accounts of all the facts related
24 to my employment. I provided my attorneys with extensive documentation that I believe supported the
25 claims brought against Defendant. I met with and assisted my attorneys in understanding these
26 documents and providing context for Defendant's payroll process as it applied to me and how I believed
27 it applied to Defendant's other employees. I worked at two different job locations and worked under
28

multiple of Defendant's foremen, so I had an opportunity to observe which policies and practices of Defendant were similar among all Class Members regardless of location/supervisor.

//

5. The work I performed for this case included a review of documents and payroll practices to show and explain to my attorneys what was happening and why I thought it was unlawful. For example, I went over time records produced by Defendant with my attorneys to give context to Defendant's practices regarding tracking employees' hours worked and in particular that Defendant's foremen were recording my hours on my timecard rather than myself. This was important as it helped the minimum wage and meal period claims. The review became even more detailed when my attorneys asked me questions about the payroll data sample that was produced as part of informal discovery to engage in mediation. Overall, I have spent a substantial amount of time assisting in the prosecution of this case.

6. I participated in the negotiations and settlement discussions in this case, including participating in mediation by phone, speaking with my attorneys to answer questions, provide any additional information needed to assist the negotiations, and discussing the potential terms of the Agreement to evaluate its adequacy. Throughout the course of this litigation, I have asked questions when I needed clarification about various aspects of this case to make sure there were continually steps taken to advance the interests of Class Members.

7. Although I have already spent a substantial amount of time on this case and assisting my attorneys, I expect the amount of time I spend on this case will increase if preliminary approval is granted because Class Members will likely reach out to me about the Settlement and the process for receiving payment.

8. I have not received any benefits as a result of filing this lawsuit. I have, however, experienced substantial burdens as a result of filing the lawsuit that other Class Members were not subject to. For example, in bringing the lawsuit, I assumed the risk of having to pay Defendant's costs if the Court or jury rules against us on the claims. My understanding is that this is a substantial risk because the costs associated with litigation, in general, are very high and this cost is multiplied many times over in complex litigation like class actions. I have spent a substantial amount of time in this

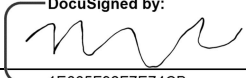
1 case, securing a monetary benefit for many individuals who have not had to do anything whatsoever to
2 have the opportunity to receive it. I have been employed during the majority of the time this case has
3 been pending. As a result, the time I have spent on this case has to occur during my lunch and/or
4 breaks times, after hours, and on my days off. Rather than spend this time with friends and family, I
5 have spent this time for the benefit of Class Members. Finally, as part of the Settlement, I am the only
6 individual providing a general release of all my individual claims and waiving the protections of
7 California Civil Code section 1542 for unknown claims. No other Class Member is subject to such a
8 broad release.

9 9. I have reviewed the final Joint Stipulation of Class Action and PAGA Settlement and
10 Release, discussed the terms with my attorney, and asked my attorney any questions I had. I believe
11 the terms of the Settlement and allocations are fair and reasonable given the facts of the case.

12 10. I understand that any Class Representative Enhancement Payment I may receive is for
13 my participation as a Class Representative and it is not contingent on my support or approval of the
14 Agreement.

15 I declare under penalty of perjury under the laws of the State of California that the foregoing is
16 true and correct. Executed on 3/4/2024 in Sacramento, California.

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DocuSigned by:

1E665F92F7E74CB...
Maurece Martin

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Justin P. Rodriguez (Cal. State Bar No. 278275)
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6
7

8 **SUPERIOR COURT OF CALIFORNIA**
9 **FOR THE COUNTY OF SACRAMENTO**
10

11 MAURECE MARTIN, individually and on
12 behalf of all other similarly situated
employees,

13 Plaintiff,

14 vs.
15

16 WESTERN ENGINEERING
CONTRACTORS, INC., a California
17 Corporation; and DOES 1 to 100, inclusive,

18 Defendants.
19

Case No. 34-2023-00334816

*Assigned for All Purposes to Hon. Jill Talley,
Department 23*

CLASS ACTION

**MEMORANDUM OF POINTS &
AUTHORITIES IN SUPPORT OF
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT**

Reservation No. A-334816-001

Date: March 29, 2024

Time: 9:00 a.m.

Dept.: 23

Judge: Hon. Jill Talley

Filed: February 15, 2023

FAC Filed: May 25, 2023

Trial Date: None set

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I. INTRODUCTION AND OPENING SUMMARY OF ARGUMENT

Plaintiff Maurece Martin (“Plaintiff”) seeks preliminary approval of a wage and hour class action and Private Attorneys General Act (“PAGA”) settlement in the gross amount of \$417,500. *See generally* Exhibit A (Joint Stipulation Regarding Class Action and PAGA Settlement and Release [“Agreement”]). Plaintiff brought this class action individually and on behalf of similarly situated employees who worked for Defendant Western Engineering Contractors, Inc. (“Defendant”) (Plaintiff and Defendant sometimes collectively referred to as the “Parties”). *See generally* Exhibit B (Plaintiff’s Proposed Operative Complaint). There are approximately 92 Class Members.

Plaintiff has alleged that Defendant violated California law by 1) failing to accurately record and maintain employees’ hours worked; 2) failing to pay for all hours worked, including travel time, overtime and minimum wages; 3) failing to authorize and permit putative class members to take all meal and rest periods; 4) failing to include the inclusive dates of the pay period and employees’ last 4 digits of their social security number or employee identification number on wage statements issued to putative class members; 5) failing to incorporate the value of prevailing wage rates into employees’ paid sick leave and regular rates of pay for the purpose of calculating overtime wages on non-prevailing wage jobs; 6) failing to reimburse the use of personal cell phones and vehicles; 7) failing to pay accrued and unused vacation pay at all or at an employee’s final regular rate of pay at the time of separation; 8) failing to pay final wages and (9) engaging in unfair competition. *See generally* Exhibit B; *see also* Declaration of Brittany V. Berzin (“Decl. Berzin”), ¶¶ 9-10. Plaintiff has also alleged Defendant is liable for a civil penalties under the PAGA based on these violations. *See id.*; Exhibit C (Plaintiff’s Ltr. to the Labor and Workforce Development Agency [“LWDA”] Regarding PAGA Claims). Defendant has denied all of Plaintiff’s allegations in their entirety and any liability or wrongdoing of any kind. *See* Decl. Berzin, ¶ 5. Defendant has also denied that this case is appropriate for class certification other than for purposes of settlement. *See id.* However, subject to Court approval, the Parties have been able to compromise and settle all asserted claims as a result of extensive investigations, document and data exchanges, and extended negotiations. *See* Exhibit A. Plaintiff and Plaintiff’s counsel believe the proposed Agreement is fair, reasonable, and adequate based on the investigations, discovery, employee data exchanges, negotiations, and a detailed knowledge of the issues in this case. *See* Decl. Berzin, ¶¶

1 5, 6-7, 9-10.

2 It is well within the discretion of this Court to grant preliminary approval of the Agreement as it
3 satisfied all applicable criteria under California law. Accordingly, Plaintiff requests that the Court: (1)
4 certify the proposed settlement class on a preliminary and conditional basis; (2) grant preliminary and
5 conditional approval of the proposed Agreement (Exhibit A); (3) approve the form and content of the
6 Notice of Settlement (Exhibit F) and the method for providing notice to Class Members as set forth in
7 the Agreement; and (4) adopt the implementation schedule contained in the proposed order.

8 **II. PROCEDURAL AND LITIGATION HISTORY**

9 Plaintiff filed a class action complaint on approximately February 15, 2023, in the Sacramento
10 County Superior Court against Defendant. Plaintiff exhausted administrative remedies under the
11 PAGA by providing notice of the claims and violations to the LWDA. *See* Exhibit C; Cal. Lab. Code §
12 2699.3(a), (c); Decl. Berzin, ¶ 3. Plaintiff filed a First Amended Class Action Complaint on
13 approximately May 25, 2023 to include a PAGA claim. *See id.* Plaintiff submitted a stipulation and
14 order to file a Second Amended Complaint on February 12, 2024, for leave to file a Second Amended
15 Complaint to match the scope of the resolution reached by the Parties, adding claims for unpaid travel
16 time, failure to reimburse expenses and failure to pay accrued vacation. *See* Exhibit B. There is no
17 date set for a motion for certification or trial in this matter. *See* Decl. Berzin, ¶ 4.

18 **III. INVESTIGATION AND DISCOVERY CONDUCTED**

19 Plaintiff thoroughly investigated issues affecting certification, the merits of the class claims, and
20 potential damages for such claims. *See id.* at ¶¶ 3, 6-10; Declaration of Maurece Martin (“Decl.
21 Martin”) ¶ x. Plaintiff worked during the time all of Defendant's policies and practices at issue in the
22 Complaint were in effect and provided information regarding these policies and practices, enabling pre-
23 filing investigations to take place. *See* Decl. Martin, ¶ 2. The Parties engaged in informal discovery
24 and exchange of documents, including a representative sampling of employee data, such as timecards,
25 paystubs, payroll data, and relevant policies for the entirety of the statute of limitations applicable to the
26 asserted claims. The discovery covered all aspects of the asserted claims, including certification issues,
27 merits issues, damages, the scope and configuration of Class Members, the content and implementation
28 of the wage and hour policies at issue, issues relating to manageability concerns at trial, among other

relevant areas. *See* Decl. Berzin, ¶ 7. The information allowed Plaintiff to determine the extent and frequency of any violations in accordance with Plaintiff's contentions and create an accurate damages model to assess the reasonableness of any settlement. *See id.*

IV. NEGOTIATION AND PROPOSED SETTLEMENT

a. Plaintiff and Defendant Engaged in Extensive Arm's Length Negotiations

The final settlement occurred only after extended, arm's length negotiations. Over the course of approximately eight months, Plaintiff has been investigating the claims and discussing with Defendant's counsel the merits of the claims and issues present in this case. *See id.* at ¶¶ 5-8. The Parties exchanged substantial amounts of information and legal analysis in connection with these discussions. *See id.* It was only after these extended discussions, which included a full day mediation with Russ J. Wunderli, Esq., that the Parties were able resolve all claims and enter into the Agreement. *See id.* at ¶ 8.

b. The Terms of the Agreement

1. The following groups of individuals are covered by the Agreement: (a) Class Members, which include all non-exempt, hourly employees who have, or continue to, work for Defendants in California, and who did not sign an arbitration agreement with a class action waiver, from February 15, 2019 up to October 8, 2023; and (b) Aggrieved Employees, which include all non-exempt, hourly employees who have, or continue to, work for Defendant in California from February 14, 2022 up to October 8, 2023. *See* Exhibit A, ¶¶ 1.2, 1.5. There are approximately 92 Class Members.

2. Defendant will pay the Gross Settlement Amount of \$417,500, which is exclusive of the employer's share of payroll taxes. *See id.* at ¶ 5.1. No portion of the Gross Settlement Amount will revert to Defendant. *See id.* at ¶ 5.6. Aggrieved Employees will still be paid their share of the PAGA Payment regardless of whether they opt out of being Class Members. *See id.* at ¶¶ 7.5.1, 7.8.3.

3. Up to \$10,000 will be paid to Plaintiff as an Enhancement Payment. This amount will be in addition to any amount Plaintiff may be entitled to under the terms of the Agreement. *See id.* at ¶ 5.4.

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1 4. Subject to Court approval, the Parties have selected Apex Class Action to act as the
2 Settlement Administrator, who has provided a maximum cost estimate of \$10,000. *See* Exhibit D
3 (Apex Class Action Quote); Exhibit A, ¶ 1.33; Decl. Berzin, ¶ 21.

4 5. The Parties agree that \$41,750.00 of the Gross Settlement Amount shall be allocated to
5 resolving claims under the PAGA. Seventy-Five percent (75%) of the PAGA Payment will be paid to
6 the LWDA and Twenty-Five percent (25%) will be paid to Aggrieved Employees. *See* Exhibit A, ¶
7 5.5. Given the risk to proving the claims on the merits, the derivative nature of the penalties, the efforts
8 by Defendant to maintain compliant policies and take corrective action, the presence of what may likely
9 be deemed good faith disputes, and the Court's discretion to reduce any penalty award, Plaintiff
10 believes the \$41,750.00 PAGA Payment allocation represents a meaningful settlement aimed at
11 deterring non-compliance given the facts of this case. *See* Decl. Berzin, ¶¶ 5-10; *see also Nordstrom*
12 *Com. Cases*, 186 Cal.App.4th 576, 589 (2010) (approving \$0 allocation to the resolution of PAGA
13 claims based on their being disputed and being part of a class settlement which was evaluated based on
14 the terms of the agreement overall); *Junkersfeld v. Med. Staffing Sols., Inc.*, 2022 WL 2318173, at *8
15 n.2 (E.D. Cal. 2022) (collecting cases with PAGA settlement values ranging from .037%-1%); *Jennings*
16 *v. Open Door Marketing, LLC*, 2018 WL 4773057, *9 (N.D. Cal. 2018) (approving settlement of
17 PAGA claims at 0.6% of total estimated value due to risk of no recovery); *Ruch v. AM Retail Grp.,*
18 *Inc.*, 2016 WL 5462451, *7 (N.D. Cal. 2016) (approving \$10,00 PAGA settlement allocation where
19 total PAGA penalty exposure was approximately \$5.2 million, or 0.2% of total estimated value); *Davis*
20 *v. Cox Commc'ns California, LLC*, 2017 U.S. Dist. LEXIS 63514, *1 (S.D. Cal. 2017) (preliminarily
21 approving \$4,000 PAGA allocation in \$275,000 settlement); *Moore v. Fitness Int'l, LLC*, 2014 U.S.
22 Dist. LEXIS 8358, *5 (S.D. Cal. 2014) (approving \$2,500 PAGA allocation when attorneys' fees award
23 alone amounted to \$200,000); *Jack v. Hartford Fire Ins. Co.*, 2011 U.S. Dist. LEXIS 118764, *6 (S.D.
24 Cal. 2011) (approving \$3,000 PAGA allocation in \$1,200,000 settlement); *Singer v. Becton Dickinson*
25 *& Co.*, 2010 U.S. Dist. LEXIS 53416, *2 (S.D. Cal. 2010) (approving \$3,000 PAGA allocation in
26 \$1,000,000 settlement); *Hopson v. Hanesbrands Inc.*, 2009 U.S. Dist. LEXIS 33900, *9 (N.D. Cal.
27 2009) (approving \$1,500 PAGA allocation in \$1,026,000 settlement); *Syed v. M-I, L.L.C.*, 2017 U.S.
28 Dist. LEXIS 24880, *34-35 (E.D. Cal. 2017) (approving \$100,000 PAGA allocation in a \$3,950,000

1 settlement even though PAGA exposure was calculated at \$53,600,000, or 0.2% of total estimated
2 value); *Garcia v. Gordon Trucking, Inc.*, 2012 U.S. Dist. LEXIS 160052, at *7 (E.D. Cal. 2012)
3 (approving \$10,000 PAGA allocation in a \$3,700,000 settlement); *Franco v. Ruiz Food Prod., Inc.*,
4 2012 WL 5941801, at *14 (E.D. Cal. 2012) (\$10,000 in PAGA payment from \$2,500,000 settlement
5 fund); *Chu v. Wells Fargo Investments, LLC*, 2011 WL 672645, at *1 (N.D. Cal. 2011) (approving
6 PAGA settlement payment of \$7,500 to the LWDA out of \$6.9 million common-fund settlement).

7 6. The Parties agree that up to thirty-five percent (35%) of the Gross Settlement Amount
8 (\$146,125) will be paid for Plaintiff's attorneys' fees incurred in the litigation of this case. Defendant
9 will not oppose any application for attorneys' fees so long as it is within this threshold. *See id.* at ¶ 5.2.
10 Additionally, the Parties agree that Plaintiff will also be entitled to the actual litigation costs as
11 approved by the Court in an amount not to exceed \$10,000. *See id.* The proposed notice to be sent to
12 Class Members will state this information. *See* Exhibit F.

13 7. Any allocated amounts under the Agreement for Settlement Administrator Costs, Class
14 Representative Enhancement Payment, and attorney's fees and costs that are not ultimately awarded by
15 the Court will remain part of the Net Settlement Amount and be paid out to Participating Class
16 Members on a pro rata basis as set forth in the Agreement. *See* Exhibit A, ¶¶ 5.1-5.5, 5.8. These
17 amounts will be paid out from the Gross Settlement Amount, not in addition to the Gross Settlement
18 Amount. *See* Exhibit A, ¶¶ 5.1-5.5.

19 8. Class Members who fail to timely opt-out of this settlement will waive all Released
20 Class Claims as set forth in the Agreement. *See* Exhibit A, ¶¶ 1.14, 1.26, 1.30, 1.32, 6.1. Aggrieved
21 Employees will waive all Released PAGA Claims as set forth in the Agreement regardless of whether
22 they opt out of being a Class Member. *See id.* at ¶¶ 1.2, 1.14, 1.31-1.32, 6.2, 7.5.1.

23 9. For any portion of the Net Settlement Amount or PAGA Payment allocated to
24 Participating Class Members and/or Aggrieved Employees that is not claimed by them by cashing their
25 respective settlement checks within 180 calendar days of issuance, that remaining amount shall be
26 donated to Sacramento Food Bank and Family Services under the doctrine of *cy pres*. *See* Exhibit A, at
27 ¶ 5.6. Because the Agreement provides for all funds such that there is no residue, the provisions of
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California Civil Procedure Code section 384 are inapplicable. *See In re Microsoft I-V Cases*, 135 Cal.App.4th 706, 718, 720 (2006).

c. Allocation of Settlement Funds

Payment to Participating Class Members and Aggrieved Employees will not require the submission of a claim form. A Net Settlement Amount will be determined by subtracting from the Gross Settlement Amount any attorneys' fees and costs, Enhancement Payment to the Class Representative, Settlement Administrator Costs, and PAGA Payment that are approved and/or awarded by the Court. 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. *See Exhibit A*, at ¶¶ 1.17, 5.5, 5.8.

V. THE PROPOSED PROCEDURES TO NOTIFY CLASS MEMBERS SATISFY DUE PROCESS AS THEY PROVIDE THE BEST NOTICE PRACTICABLE UNDER THE CIRCUMSTANCES

It is not required that Class Members be given actual notice of a class settlement; instead, the best practicable notice under the circumstances is all that is required. *See Silber v. Mabon*, 18 F.3d 1449, 1453 (9th Cir. 1994); *Briseno v. ConAgra Foods, Inc.*, 844 F.3d 1121, 1129 (9th Cir. 2017); *Walsh v. CorePower Yoga LLC*, 2017 U.S. Dist. LEXIS 163991, at *12-14 (N.D. Cal. 2017); *Wright v. Linkus Enters.*, 259 F.R.D. 468, 474-75 (E.D. Cal. 2009). In *Silber v. Mabon*, 18 F.3d 1449 (9th Cir. 1994), the Court rejected a class member's argument that he had not received due process because he did not receive notice until after the opt out period, finding that, so long as the notice process utilized is the best practicable under the circumstances, due process is satisfied even if there is no actual receipt of the notice. *See Silber*, 18 F.3d at 1453-1454. A similar finding was made in *Briseno v. Conagra Foods, Inc.*, 844 F.3d 1121 (9th Cir. 2017). With regard to any potential for undeliverable notice mailings, the Court in *Rannis v. Recchia*, 380 F. App'x 646 (9th Cir. 2010) found that class members

1 who did not receive actual notice due to their mailings being deemed undeliverable were still properly
2 held to be part of the class settlement because they received the best notice practicable under the
3 circumstances. *See Rannis v. Recchia*, 380 F. App'x at 650-651. In *Noel v. Thrifty Payless, Inc.*, 7
4 Cal.5th 955, 980-984 (2019), the California Supreme Court noted that California has adopted a similar
5 approach regarding providing notice to class members.

6 Under the proposed notice procedures, Class Members will have sixty (60) days from the date
7 of mailing to review and respond to the Notice of Settlement, which will also be available online. *See*
8 Exhibit A, ¶¶ 1.21, 7.2. The Notice of Settlement contains all information necessary for a Class
9 Member to assess the litigation, the settlement, and whether they want to participate, object, or opt-out.
10 *See id.* at ¶¶ 7.2, 7.5.1-7.5.3; Exhibit F. National change of address database searches, skip-traces, and
11 surveying of current employees will be utilized as set out in the Agreement to provide the best practical
12 means of ensuring Class Members receive the notice mailing. *See* Exhibit A, ¶¶ 7.3-7.4. Any
13 individual whose initial mailing was deemed undeliverable will have additional time to respond. *See*
14 *id.* at ¶ 7.4. Additional time to respond will also be provided to cure any deficiencies in opt-outs,
15 objections, or disputes. *See id.* ¶ 7.5.4. This notice method is regularly utilized in wage and hour class
16 actions and similar to the one approved in *Rannis*. Thus, the proposed procedures for notifying Class
17 Members satisfy due process and should be approved in this case.

18 **VI. THE AGREEMENT WARRANTS PRELIMINARY APPROVAL AS IT IS FAIR,**
19 **REASONABLE, AND ADEQUATE AS TO ALL CLASS MEMBERS BASED ON THE**
20 **FACTS OF THIS CASE**

21 A class action may not be dismissed, compromised, or settled without Court approval and the
22 decision to approve or reject a settlement is committed to the Court's sound discretion. *See* Cal. Rules
23 of Court, Rule 3.769; Fed. R. Civ. Proc., Rule 23(e)¹; *Wershba v. Apple Computer, Inc.*, 91 Cal. App.
24 4th 224, 234-35 (2001); *see also* Cal. Lab. Code §§ 2699(1)(2). However, "[d]ue regard should be given
25 to what is otherwise a private consensual agreement between the parties. The inquiry 'must be limited to
26 the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or
27 overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole,

28 ¹The California Supreme Court has authorized California's trial courts to rely on these federal resources to decide class certification issues. *See Green v. Obledo*, 29 Cal.3d 126, 145-46 (1981).

1 is fair, reasonable and adequate to all concerned.” *See Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794,
2 1801 (1996); *see also Cellphone Termination Fee Cases*, 180 Cal. App. 4th 1110, 1118 (2009); *In re*
3 *Microsoft I-V Cases*, 135 Cal. App. 4th 706, 723 (2006); *Nordstrom Com. Cases*, 186 Cal. App. 4th 576,
4 581 (2010). The law favors settlement of lawsuits, particularly class actions and other complex cases
5 where substantial resources can be conserved by avoiding the time, expense, and rigors of formal
6 litigation. *See Cellphone Termination Fee Cases*, 180 Cal. App. 4th 1110, 1117-1118 (2009); *In re*
7 *Microsoft I-V Cases*, 135 Cal. App. 4th 706, 723 n.14 (2006); *Nordstrom Com. Cases*, 186 Cal. App. 4th
8 576, 581 (2010); *see also Neary v. Regents of Univ. of Cal.*, 3 Cal. 4th 273, 277-81 (1992).

9 **a. The Terms of The Settlement Are Fair and Within the Range of Reasonableness**

10 The purpose of the Court’s preliminary evaluation of a proposed class action settlement is to
11 determine only whether it is within the range of possible approval such that notice to the class of its
12 terms and conditions and the scheduling of a formal fairness hearing is warranted. *See Wershba*, 91 Cal.
13 App. 4th at 234-35. If the Court finds a proposed settlement falls within “the range of reasonableness,”
14 it should grant preliminary approval of the class action settlement. *See, e.g., North County Contr.’s*
15 *Assn., Inc. v. Touchstone Ins. Svcs.*, 27 Cal. App. 4th 1085, 1089-90 (1994); *Kullar v. Foot Locker*
16 *Retail, Inc.*, 168 Cal. App. 4th 116, 133 (2008). Factors to consider in determining whether the
17 settlement is fair, reasonable, and adequate include the strength of the Plaintiff’s case, the risk, expense,
18 complexity and likely duration of further litigation, the risk of maintaining class action status through
19 trial, the amount offered in settlement, the extent of discovery completed and the stage of the
20 proceedings, the experience and views of counsel, the presence of a governmental participant, and the
21 reaction of the class members to the proposed settlement. *See Dunk v. Ford Motor Co.*, 48 Cal. App. 4th
22 1794, 1801 (1996). However, this Court should begin its analysis with a presumption that the proposed
23 settlement is fair. “A presumption of fairness exists where: (1) the settlement is reached through arm’s
24 length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act
25 intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is
26 small.” *Id.* at 1802.

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1 **i. The Agreement is a Result of Extensive, Non-Collusive Arm’s Length**
2 **Negotiations Between the Parties**

3 Settlement of this case was reached only after substantial litigation and extensive arm’s length
4 negotiations lasting nearly eight months, which included a full day mediation. *See* Decl. Berzin, ¶¶ 5, 7,
5 8-10. At all times, the negotiations were adversarial, although still professional in nature. *See id.*

6 **ii. The Extent of Investigation and Discovery Completed Provided Ample**
7 **Information to Enter Into an Informed and Reasonable Settlement**

8 The Parties were in possession of all necessary information during the negotiations. The Parties
9 engaged in substantial informal discovery, which included all necessary components for evaluating the
10 class claims and creating an accurate damages model. *See id.* at ¶¶ 7, 9-10. Plaintiff was in possession
11 of this information prior to calculating any damages in this case. *See id.* As a result, Plaintiff was able
12 to make a reasonable estimation of Defendant's potential liability. *See id.* For these reasons, the
13 settlement now before the Court was reached at a stage where “the parties certainly have a clear view of
14 the strengths and weaknesses of their cases” sufficient to support the settlement. *See Boyd v. Bechtel*
15 *Corp.*, 485 F.Supp. 610, 617 (N.D. Cal. 1979).

16 **iii. Plaintiff’s Counsel are Experienced in Similar Litigation**

17 Plaintiff’s counsel have considerable experience in complex litigation such as class and PAGA
18 actions. *See* Decl. Berzin, ¶¶ 12-19. Thus, Plaintiff’s counsel are qualified to evaluate the class claims,
19 the value of settlement versus moving forward with litigation, and viability of possible affirmative
20 defenses. Plaintiff’s counsel believe that the Agreement is fair, reasonable, and adequate in light of the
21 risks associated with the claims, the uncertainties of complex litigation, and the secured benefit to Class
22 Members. *See id.*

23 **iv. The Settlement is Fair, Reasonable, and Adequate Based on the Strength of**
24 **Plaintiff’s Case and the Risks and Costs of Further Litigation**

25 Plaintiff’s claims and the ability to obtain and maintain certification all the way through trial
26 were disputed by Defendant. *See* Decl. Berzin, ¶¶ 5, 9. Based on the records and facts of this case,
27 Plaintiff has secured a gross recovery of approximately 8.4% of the maximum likely value of the claims
28 in this matter and between 13.9% and 38.8% of the more realistic range of recovery. *See* Decl. Berzin,

¶¶ 9-10. The net recovery represents approximately 4.0% of the maximum likely value of the claims in this matter and between 6.7% and 18.6% of the more realistic range of recovery. The average net award is approximately \$2,169.84. *See id.*

This settlement is a reasonable compromise of the class and PAGA claims, and is within the percentile ranges of the total available damages that have been approved in other class settlements. *See Wershba*, 91 Cal.App.4th at 246, 250; *Rebney v. Wells Fargo Bank*, 220 Cal.App.3d 1117, 1139 (1990); *Officers for Justice v. Civil Serv. Comm’n*, 688 F.2d 615, 628 (9th Cir. 1982); *see also In re Omnivision Technologies, Inc.*, 559 F.Supp.2d 1036, 1042 (2007) (noting that certainty of recovery in settlement of 6% of maximum potential recovery after reduction for attorney’s fees was higher than median percentage for recoveries in shareholder class action settlements, averaging 2.2%-3% from 2000 through 2002); *Bravo v. Gale Triangle, Inc.*, 2017 U.S. Dist. LEXIS 77714 (C.D. Cal. 2017) (approving a settlement where the net recovery to class members was approximately 7.5% of the projected maximum recovery amount); *Avila v. Cold Spring Granite Co.*, 2017 U.S. Dist. LEXIS 130878 (E.D. Cal. 2017) (approving a settlement with a gross recovery of 11% of the projected maximum damages available and a net recovery of approximately 6.7% of the projected maximum recovery); *Bellinghausen v. Tractor Supply Co.*, 306 F.R.D. 245 (N.D. Cal. 2015) (approving a settlement where the gross recovery was approximately 8.5% of the projected maximum recovery); *Schiller v. David’s Bridal, Inc.*, 2012 U.S. Dist. LEXIS 80776 at *48 (E.D. Cal. 2012) (“Class Members will receive an average of approximately \$198.70, with the highest payment to a Class Member being \$695.78 . . . Overall, the Court finds that the results achieved are good, which is highlighted by the fact that there was no objection to the settlement amount or the attorneys’ fees requested.”); *Gardner v. GC Servs., LP*, 2012 U.S. Dist. LEXIS 47043, 18 (S.D. Cal. 2012) (“the results achieved in this case were very favorable. Class members are provided with immediate monetary relief, with an average award of around several hundred dollars and a minimum award of \$50”).

v. The Proposed Settlement is a Reasonable Compromise of Claims

In *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116 (2008), the Court required additional information be presented in class action settlements “to ensure that the recovery represents a reasonable

1 compromise, given the magnitude and apparent merit of the claims being released, discounted by the
2 risks and expenses of attempting to establish and collect on those claims by pursuing the
3 litigation” *Id.* at 129. *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*, 186 Cal.App.4th 399
4 (2010), clarified that *Kullar* does not require an illusory prediction of the outer reaches of exposure
5 without taking into account the actual risks of litigation such as dispositive motions and trial. *Kullar*
6 also does not require an explicit statement of the maximum amount to be recovered if a plaintiff
7 prevailed on all the claims, provided there is a record that allows “an understanding of the amount that
8 is in controversy and the realistic range of outcomes of the litigation.” *Id.* at 409.

9 Plaintiff has thoroughly set forth the realistic range of outcomes in this litigation as well as the
10 data points relied upon in reaching these ranges. *See* Decl. Berzin ¶¶ 9-10. The record demonstrates
11 that the compromises made by Plaintiff was reasonable and have resulted in a settlement with recovery
12 percentage well within the range of what has been found to be sufficient in several other cases. *See*,
13 *supra*, Section VI.a.iv; *see also* *Linney v. Cellular Alaska P'ship*, 151 F.3d 1234, 1242 (9th Cir. 1998)
14 (“The fact that a proposed settlement may only amount to a fraction of the potential recovery does not,
15 in and of itself, mean that the proposed settlement is grossly inadequate and should be disapproved”);
16 *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 455 (2d Cir. 1974) (“In fact there is no reason, at least
17 in theory, why a satisfactory settlement could not amount to a hundredth or even a thousandth part of a
18 single percent of the potential recovery”).

19 **b. Provisional Certification of the Class is Appropriate**

20 Class certification is appropriate when (1) the class is ascertainable and (2) there is “a well-
21 defined community of interest in the questions of law and fact involved affecting the parties to be
22 represented.” *Dunk*, 48 Cal. App. 4th at 1806. The “community of interest” element “embodies three
23 factors: (1) common questions of law or fact predominate; (2) class representatives with claims or
24 defenses typical of the class; and (3) class representatives who can adequately represent the class.” *Id.*
25 Here, the Parties agree that, for the purposes of settlement, these prerequisites are met. *See* Exhibit A.

26 **i. The Proposed Settlement Class is Ascertainable and Sufficiently Numerous**

27 The proposed settlement class is ascertainable because all putative Class Members can be
28 readily identified through employee personnel and payroll files. *See Noel v. Thrifty Payless, Inc.*, 7

Cal.5th 955, 980 (2019); *Rose v. City of Hayward*, 126 Cal.App.3d 926, 932 (1981); *Lee v. Dynamex, Inc.*, 166 Cal. App. 4th 1325, 1334 (2008). The numerosity requirement is met because there are 92 individuals who fall within the definition of Class Member, which makes joinder of all members impracticable. *See Gay v. Waiters' & Dairy Lunchmen's Union*, 489 F.Supp. 282 (N.D. Cal. 1980), *aff'd* 694 F.2d 531 (9th Cir. 1982); *Hebbard v. Calgrove*, 28 Cal. App. 3d 1017, 1030 (1972) (noting no set minimum to meet the numerosity prerequisite, but a class as few as twenty-eight (28) members is acceptable). Thus, these requirements are satisfied.

ii. The Commonality, Predominance, and Typicality Requirements are Met

The commonality requirement is met when there are questions of law or fact regarding the class as a whole. *See Hanlon*, 150 F.3d at 1019. Commonality requires only that some common legal or factual questions exist; Plaintiff need not show that all issues in the litigation are identical. *See Richmond v. Dart Ind., Inc.*, 29 Cal.3d 462, 473 (1981); *City of San Jose v. Superior Court*, 12 Cal.3d 447, 460 (1974). Common questions of law or fact must also predominate over individual questions and class-wide treatment of a dispute must be superior to individual litigation.² *See Richmond*, 29 Cal.3d at 469. Predominance requires a putative class be sufficiently cohesive to warrant adjudication by representation. *See Hanlon*, 150 F.3d at 1022. The typicality requirement is met when claims of the named representative are typical of those of the class, though “they need not be substantially identical.” *Id.* at 1020; *Classen v. Weller*, 145 Cal. App. 3d 27, 46-47 (1983).

The common questions of law and fact in this case stem from Plaintiff's contention that Defendant violated California law by 1) failing to accurately record and maintain employees' hours worked; 2) failing to pay for all hours worked, including travel time; 3) failing to authorize and permit putative class members to take all meal and rest periods; 4) failing to include the inclusive dates of the pay period and employees' last 4 digits of their social security number or employee identification number on wage statements issued to putative class members; 5) failing to incorporate the value of prevailing wage rates into employees' paid sick leave and regular rates of pay for the purpose of calculating overtime wages on non-prevailing wage jobs; 6) failing to reimburse the use of personal cell

²When assessing predominance and superiority, a court may consider that the class will be certified for settlement purposes only and that manageability of trial is therefore irrelevant. *See Amchem Products v. Windsor*, 521 U.S. 591 (1997).

phones and vehicles; and 7) failing to pay accrued and unused vacation pay at all or at an employee's final regular rate of pay at the time of separation. *See* Exhibit B. The waiting time penalties, unfair competition, and PAGA claims are derivative of these violations. *See id.* Plaintiff and the Class Members seek the same remedies under state law. Under these specific circumstances, the commonality and predominance requirements are satisfied. Regarding the typicality requirement, Plaintiff contends he suffered from the same unlawful policies, treatment, and circumstances as Class Members did, will request the same remedies, and will rely on the same methods of proof to establish liability and damages. *See id.* Thus, the typicality requirement is also satisfied for settlement purposes.

iii. The Adequacy Requirement is Met

The adequacy of representation requirement is met if the named representative and counsel have no interests adverse to those of the putative class members and are committed to vigorously prosecuting the case on behalf of the class. *See Hanlon*, 150 F.3d at 1020; *McGhee v. Bank of America*, 60 Cal.App.3d 442, 450-51 (1976). Those standards are met here. Under the proposed Agreement, Plaintiff and the putative Class Members will receive a pro rata share of the settlement based on the number of workweeks they worked for Defendant. *See* Exhibit A. Finally, any settlement class member who wishes to opt-out of the settlement may do so, and he or she may also dispute the number of workweeks stated in the Notice of Settlement (Exhibit F).

There is no conflict of interest between Plaintiff and Class Members. Plaintiff and Plaintiff's counsel have pursued the claims made in the operative Complaint vigorously on behalf of the class. Plaintiff's counsel, with Plaintiff's assistance, thoroughly investigated the claims made in this case by speaking with Plaintiff and reviewing substantial amounts of documents. Plaintiff's counsel thereafter engaged Defendant's counsel in settlement discussions over the course of approximately eight months. Moreover, Plaintiff's counsel has experience defending and bringing wage and hour claims. Because Plaintiff's counsel has vigorously pursued Plaintiff's and the Class Members' claims, the adequacy requirement is met. *See generally* Decl. Berzin.

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1 **VII. ATTORNEYS FEES AND COSTS, ENHANCEMENT PAYMENT TO THE CLASS**
2 **REPRESENTATIVE, AND SETTLEMENT ADMINISTRATOR COSTS TO BE**
3 **REQUESTED IN CONNECTION WITH FINAL APPROVAL**

4 Plaintiff is not requesting any determination with respect to attorney's fees and costs,
5 Enhancement Payment, or Settlement Administrator Costs at this time. Rather, should the Court grant
6 preliminary approval, Plaintiff will make the request for these amounts as set out in the Agreement as
7 part of their final approval briefing. Specifically, Plaintiff will request the Court award attorney's fees
8 in the amount of \$146,125 (35% of the Gross Settlement Amount), costs in an amount not to exceed
9 \$10,000, Settlement Administrator Costs in an amount not to exceed \$10,000, and an Enhancement
10 Payment for the Class Representative in the amount of \$10,000.

11 Plaintiff believes an award of attorney's fees under the common fund doctrine is appropriate in
12 this case as there is a sufficiently identifiable class of beneficiaries (*e.g.* the settlement class), the
13 benefits received can be accurately traced to the settlement Plaintiff and Class Counsel were able to
14 negotiate on behalf of Class Members, and the fee can be shifted with exactitude to those benefiting as
15 the fee request is a specific, lump-sum percentage of the fund. *See Laffitte v. Robert Half Internat.,*
16 *Inc.*, 1 Cal.5th 480, 506 (2016); *Paul, Johnson, Alston & Hunt v. Gaulty*, 886 F.2d 268, 271 (9th Cir.
17 1989); *Boeing Co. v. Van Gemert*, 444 U.S. 472, 477-478 (1980) ("A lawyer who recovers a common
18 fund for the benefit of persons other than . . . her client is entitled to a reasonable attorney's fee from
19 the fund as a whole."); *see also Martin v. Ameripride Servs.*, 2011 U.S. Dist. LEXIS 61796, *22-23
20 (S.D. Cal. 2011) (collecting cases); *Birch v. Office Depot, Inc.*, USDC Southern District, Case No.
21 06cv1690 DMS (WMC) (awarding 40% fee on a \$16 million wage and hour class action settlement);
22 *Rippee v. Boston Mkt. Corp.*, USDC Southern District, Case No. 05cv1359 BTM (JMA) (awarding a
23 40% fee on a \$3.75 million wage and hour class action settlement); *West v. Circle K Stores, Inc.*, 2006
24 U.S. Dist. LEXIS 76558, at *7-*8, *12, *27 (E.D. Cal. 2006) (awarding a \$15,000 representative
25 enhancement where 10,000 class members were to receive a gross award of approximately \$500 each
26 from the \$5,000,000 settlement); *Dent v. ITC Serv. Croup*, 2013 U.S. Dist. LEXIS 139359, at *9-*10,
27 *15-*16 (D. Nev. Aug. 6, 2013) (awarding a \$15,000 representative enhancement out of a \$150,000
28 settlement for approximately 530 class members); *Patel v. Nike Retail Services, Inc.*, 2019 WL
2029061 at *2 (N.D. Cal. 2019) (\$5,261 for settlement administrator's fees was not excessive where

1 PAGA group consisted of 40 employees).

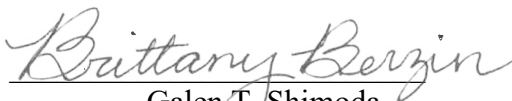
2 Plaintiff's final approval briefing will include information and analysis regarding the
3 appropriateness of the fee percentage sought, a lodestar cross check of the requested fee, a detailed
4 declaration from Plaintiff regarding their time spent on the case as well as any risks and burdens
5 incurred as the Class Representative, an itemized costs spreadsheet, and a declaration from the
6 Settlement Administrator detailing the work performed and Settlement Administrator Costs incurred.
7 *See Decl. Berzin ¶ 20.* The Notice of Settlement will state the amounts to be requested to provide Class
8 Members the ability to comment thereon, providing evidence of whether the requested amounts are
9 reasonable. *See Exhibit F at pg. 2, § II.A; see also In re Heritage Bond Litig.*, 2005 U.S. Dist. LEXIS
10 13555, 71 (C.D. Cal. 2005) ("the absence of objections or disapproval by class members to class
11 counsel's fee request further supports finding the fee request reasonable"). Any allocated amounts not
12 ultimately awarded by the Court will be distributed to Class Members pro rata. *See Exhibit A, ¶¶ 5.2-*
13 *5.4, 5.8.*

14 **VIII. CONCLUSION**

15 For all of the foregoing reasons, Plaintiff respectfully requests that this Court preliminarily and
16 conditionally certify the class for settlement purposes; grant preliminary and conditional approval of
17 the proposed settlement; approve the proposed notification procedures, including the Notice of
18 Settlement and proposed deadlines relating thereto; and schedule the final approval hearing. A copy of
19 Plaintiff's proposed order is being filed concurrently herewith.

22 **Shimoda & Rodriguez Law, PC**

24 Dated: March 5, 2024

23 By: 
25 Galen T. Shimoda
26 Justin P. Rodriguez
27 Brittany V. Berzin
28 Attorneys for Plaintiff

1 Galen T. Shimoda (Cal. State Bar No. 226752)
Justin P. Rodriguez (Cal. State Bar No. 278275)
2 Brittany V. Berzin (Cal. State Bar No. 325121)
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3 9401 East Stockton Boulevard, Suite 120
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5 Attorneys for Plaintiff MAURECE MARTIN
6
7

8 **SUPERIOR COURT OF CALIFORNIA**
9 **FOR THE COUNTY OF SACRAMENTO**
10

11 MAURECE MARTIN, individually and on
12 behalf of all other similarly situated
employees,

13 Plaintiff,

14 vs.

15 WESTERN ENGINEERING
16 CONTRACTORS, INC., a California
17 Corporation; and DOES 1 to 100, inclusive,

18 Defendants.
19
20
21
22
23
24

Case No. 34-2023-00334816

*Assigned for All Purposes to Hon. Jill Talley,
Department 23*

CLASS ACTION

**EXHIBIT LIST AND EXHIBITS IN
SUPPORT OF PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT**

Reservation No. A-334816-001

Date: March 29, 2024

Time: 9:00 a.m.

Dept.: 23

Judge: Hon. Jill Talley

Filed: February 15, 2023

FAC Filed: May 25, 2023

Trial Date: None set

<u>EXHIBIT</u>	<u>DESCRIPTION</u>
A	Joint Stipulation Regarding Class Action and PAGA Settlement and Release
B	Plaintiff's Proposed Operative Complaint
C	Plaintiff's Letter to the LWDA Regarding PAGA Claims
D	Apex Declaration & Class Action Quote
E	Plaintiff's Itemized Costs
F	Proposed Notice of Settlement
G	Proof of Submission of Proposed Settlement Agreement to LWDA

Dated: March 5, 2024

Shimoda & Rodriguez Law, PC

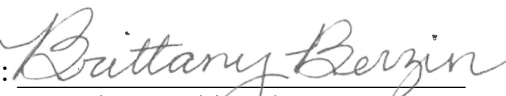
By: 
 Galen T. Shimoda
 Justin P. Rodriguez
 Brittany V. Berzin
 Attorneys for Plaintiff

EXHIBIT A

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Attorneys for WESTERN
ENGINEERING CONTRACTORS, INC.

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

MAURECE MARTIN, individually and on
behalf of all other similarly situated
employees,

Plaintiff,

vs.

WESTERN ENGINEERING
CONTRACTORS, INC., a California
Corporation; and DOES 1 to 100, inclusive,
Defendants.

Case No.: 34-2023-00334816

**JOINT STIPULATION REGARDING CLASS
ACTION AND PAGA SETTLEMENT AND
RELEASE**

Filed: February 15, 2023

FAC Filed: May 25, 2023

Trial Date: None Set

1 This Joint Stipulation Regarding Class Action and PAGA Settlement and Release is made and
2 entered into between the Plaintiff Maurece Martin ("Plaintiff"), on behalf of himself, the Labor and
3 Workforce Development Agency, Class Members, and Aggrieved Employees, and Defendant Western
4 Engineering Contractors, Inc. ("Defendant"). This Agreement is subject to the terms and conditions set
5 forth below and the approval of the Court.

6 **1. DEFINITIONS**

7 The following terms, when used in this Agreement, have the following meanings:

8 1.1 "Action" means the above stated lawsuit, *Martin v. Western Engineering Contractors, Inc.*,
9 Sacramento County Superior Court, Case No. 34-2023-00334816, filed February 15, 2023.

10 1.2 "Aggrieved Employee(s)" means all non-exempt, hourly employees who have, or continue
11 to, work for Defendant in California during the PAGA Claim Period.

12 1.3 "Agreement" or "Settlement" or "Settlement Agreement" means this Joint Stipulation
13 Regarding Class Action and PAGA Settlement and Release.

14 1.4 "Class Counsel" means Galen T. Shimoda, Justin P. Rodriguez and Brittany V. Berzin of
15 Shimoda & Rodriguez Law, PC.

16 1.5 "Class Member(s)" means all non-exempt, hourly employees who have, or continue to,
17 work for Defendant in California, and who did not sign an arbitration agreement with a class action waiver,
18 during the Class Period.

19 1.6 "Class Period" means February 15, 2019, up to October 8, 2023.

20 1.7 "Class Representative" means Plaintiff Maurece Martin .

21 1.8 "Class Representative's Released Claims" means all claims arising from, could have been
22 asserted, or related in any way to the Class Representative's employment with Defendant, under federal,
23 state, or local laws, and/or ordinances, or tort or contract theories, whether known or unknown, and whether
24 anticipated or unanticipated, including without limitation statutory, constitutional, contractual or common
25 law claims for lost wages, unpaid wages, emotional distress, punitive damages, special damages, damages,
26 unpaid costs, penalties, liquidated damages, interest, attorneys' fees, litigation costs, restitution, equitable
27 relief or other similar relief or claims. Without limiting the foregoing, this release shall include, but not be
28 limited to, any and all claims under the Americans With Disabilities Act, as amended; Title VII of the Civil

Rights Act of 1964, as amended; the Civil Rights Act of 1991; 42 U.S.C. § 1981, as amended; the Age Discrimination in Employment Act, as amended; the Fair Labor Standards Act, as amended; the Equal Pay Act; the Employee Retirement Income Security Act, as amended; the Consolidated Omnibus Budget Reconciliation Act; the Rehabilitation Act of 1973; the Family and Medical Leave Act; the Civil Rights Act of 1966; the California Fair Employment and Housing Act; the California Constitution; the California Labor Code; the California Government Code; the IWC Wage Orders, and any and all other federal, state and local statutes, ordinances, regulations, rules and other laws, and any and all claims based on constitutional, statutory, common law or regulatory grounds as well as any other claims based on theories of wrongful or constructive discharge, breach of contract or implied contract, fraud, misrepresentation, promissory estoppel, defamation, or intentional and/or negligent infliction of emotional distress, or damages under any other federal, state or local statutes, ordinances, regulations, rules or laws. This release is for any and all relief, no matter how denominated, including, but not limited to, back pay, front pay, vacation pay, bonuses, compensatory damages, tortious damages, liquidated damages, punitive damages, damages for pain and suffering, and attorney fees and costs. The Class Representative's Released Claims exclude claims for workers' compensation, unemployment insurance benefits, or other claims that cannot be released as a matter of law.

1.9 "Complaint" means the operative Complaint on file in the Action with the Court.

1.10 "Court" means the Sacramento County Superior Court.

1.11 "Defendant" means Western Engineering Contractors, Inc..

1.12 "Defendant's Counsel" means Cook Brown LLP.

1.13 "Enhancement Payment" means the amount approved by the Court to be paid to the Class Representative in recognition of the time and effort expended on behalf of Class Members for the benefit of Class Members, which is in addition to any Individual Settlement Amount paid to the Class Representative as a Participating Class Member.

1.14 "Effective Date" means the Final Approval Date unless there is a timely objection lodged that has not later been withdrawn, in which case the Effective Date will be either (a) the 60th calendar day after a signed order approving this settlement has been filed provided no appellate proceeding having been filed; or (b) seventh (7th) calendar day after any appellate proceeding opposing the settlement has been

1 finally dismissed with no material change to the terms of this settlement and there is no right to pursue
2 further remedies or relief, whichever is later.

3 1.15 “Final Approval Date” means the date a signed order granting final approval of this
4 Agreement is filed with the Court.

5 1.16 “Gross Settlement Amount” is the sum of Four Hundred Seventeen Thousand Five Hundred
6 Dollars and No Cents (\$417,500.00).

7 1.17 “Individual Settlement Amount” means an individual Class Member’s and Aggrieved
8 Employee’s allocation of the Net Settlement Amount and PAGA Payment respectively, as defined in
9 Sections 1.19, 1.23, 5.5, and 5.8.

10 1.18 “LWDA” means the California Labor and Workforce Development Agency.

11 1.19 “Net Settlement Amount” is the portion of the Gross Settlement Amount available for
12 distribution to Class Members, as described in this Agreement, after deduction of Class Counsel’s
13 attorneys’ fees and litigation costs, Settlement Administrator Costs, the PAGA Payment, and Enhancement
14 Payment to the Class Representative.

15 1.20 “Notice of Settlement” means the document substantially in the form attached hereto as
16 Exhibit 1.

17 1.21 “Notice Period” means sixty (60) calendar days from the initial mailing of the Notice of
18 Settlement to Class Members and Aggrieved Employees.

19 1.22 “PAGA” means Private Attorneys General Act.

20 1.23 “PAGA Payment” means the amount allocated from the Gross Settlement Amount towards
21 resolving claims under the Private Attorneys General Act of 2004, California Labor Code §§ 2698 *et seq.*

22 1.24 “PAGA Claim Period” means February 14, 2022, up to October 8, 2023.

23 1.25 “Parties” mean Defendant and Plaintiff.

24 1.26 “Participating Class Member” means any and all Class Members who have not made any
25 timely request to opt-out of the Agreement.

26 1.27 “Preliminary Approval Date” means the date a signed order granting preliminary approval
27 of this Agreement is filed with the Court.

1 1.28 “QSF” means a Qualified Settlement Fund set up by the Settlement Administrator for the
2 benefit of the Participating Class Members and/or Aggrieved Employees and from which the payments
3 under this Agreement shall be made. Any amounts Defendant has agreed to pay under this Agreement shall
4 remain the property of Defendant until the payments required under the Agreement are made.

5 1.29 “Qualifying Workweeks” are weeks worked by Class Members and/or Aggrieved
6 Employees wherein they worked at least one (1) shift, during the Class Period and/or PAGA Claim Period,
7 respectively, in California. The calculation of a Class Member’s and/or Aggrieved Employee’s workweeks
8 and a determination as to whether a Class Member and/or Aggrieved Employee was actively employed in
9 California in a particular workweek shall be construed from Defendant's records.

10 1.30 “Released Class Claims” means any and all claims that are alleged in the operative
11 Complaint, and any additional wage and hour claims that could have been brought based on the facts
12 alleged in the operative Complaint, through the Class Period. This release includes but is not limited to
13 claims for (1) failure to pay overtime wages (CA Labor Code §§ 510, 558, 558.1, 1194, 1815 and Wage
14 Order 16, § 3; (2) failure to pay minimum wages (CA Labor Code § 1194, 1194.2, 1197.1 and Wage Order
15 16 § 4; (3) meal period violations (CA Labor Code §§ 226.7, 512 and Wage Order 16 § 11(A), (B); (4) rest
16 period violations (CA Labor Code § 226.7 and Wage Order 16 § 12(A); (5) wage statement penalties (CA
17 Labor Code §§ 226, 226.3, 1174, 1815, 1198 and Wage Order 16, § 6(A); (6) waiting time penalties (CA
18 Labor Code §§ 201-203, 256); (7) Failure to Provide Paid Sick Leave (CA Labor Code §§ 246, 246.5,
19 248.5); (8) unfair competition (CA B & P Code § 17200, et seq.); (9) Private Attorneys General Act, (10)
20 Failure to Reimburse for Business Expenses (CA Labor Code § 2802); and (11) Failure to Pay Accrued
21 Vacation (CA Labor Code § 227.3). This release excludes the release of claims not permitted by law. This
22 release will cover all Class Members who do not opt out.

23 1.31 “Released PAGA Claims” means any and all claims for civil penalties that were brought
24 under the Private Attorneys General Act, Labor Code §§ 2698 *et seq.*, contained in Plaintiff’s operative
25 Complaint, Plaintiff’s PAGA letter to the Labor Workforce Development Agency and any additional wage
26 and hour PAGA claims that could have been brought based on the facts alleged in the operative Complaint
27 and PAGA letter during the PAGA Claim Period. This release includes but is not limited to claims for (1)
28 Failure to Pay Overtime Wages (CA Labor Code §§ 510, 1194, 1815; IWC Wage Order 16, § 3); (2) Failure

1 to Pay Minimum Wages (CA Labor Code §§ 1194, 1197.1, IWC Wage Order 16, §4); (3) Failure to Provide
2 Meal Periods or Pay Premiums in Lieu Thereof (CA Labor Code §§ 226.7, 512 and Wage Order 16, §
3 11(A), (B); (4) Failure to Provide Rest Breaks or Pay Premiums in Lieu Thereof (CA Labor Code § 226.7
4 and IWC Wage Order 16, § 12(A); (5) Failure to Provide Accurate Wage Statements (CA Labor Code §§
5 226, 226.3); (6) Failure to Pay Final Wages (CA Labor Code §§ 201-203, 256); (7) Violation of Provisions
6 Regulating Hours and Days of Work in any Industrial Welfare Commission Order (CA Labor Code §§
7 558, 558.1, 1193.6, 2802); (8) Failure to Maintain Accurate Records (CA Labor Code §§ 226.3, 1174,
8 1815, 1198 and IWC Wage Order 16, § 6(A); (9) Failure to Provide Paid Sick Leave (CA Labor Code §§
9 246, 246.5, 248.5); (10) Failure to Reimburse for Business Expenses (CA Labor Code § 2802); and (11)
10 Failure to Pay Accrued Vacation (CA Labor Code § 227.3). Aggrieved Employees cannot opt out of this
11 waiver of claims.

12 1.32 “Released Parties” means Defendant, as well as Defendant’s current and former officers,
13 shareholders, directors, agents, employees, attorneys, and insurers, including but not limited to Don J.
14 Carroll, Theresa W. Carroll, Lyndsey C. Gregory and Josh Wertz.

15 1.33 “Settlement Administrator” means and refers to Apex Class Action, the third-party entity
16 that will administer the Agreement as outlined in Sections 4 and 7, or any other third-party administrator
17 agreed to by the Parties and approved by the Court for the purposes of administering this Agreement. The
18 Parties each represent that they do not have any financial interest in the Settlement Administrator.

19 1.34 “Settlement Administrator Costs” means the fees and expenses reasonably incurred by the
20 Settlement Administrator as a result of the procedures and processes expressly required by this Agreement,
21 and shall include all costs of administering the Agreement, including, but not limited to, all tax document
22 preparation, custodial fees, and accounting fees incurred by the Settlement Administrator; all costs and fees
23 associated with preparing, issuing and mailing any and all notices and other correspondence to Class
24 Members and/or Aggrieved Employees; all costs and fees associated with communicating with Class
25 Members and/or Aggrieved Employees, Class Counsel, and Defendant’s Counsel; all costs and fees
26 associated with computing, processing, reviewing, and paying the Individual Settlement Amounts, and
27 resolving disputes; all costs and fees associated with calculating employer taxes, tax withholdings and
28 payroll taxes, if any, making related payment to federal and state tax authorities, if any, and issuing tax

forms relating to payments made under the Agreement; all costs and fees associated with preparing any tax returns and any other filings required by any governmental taxing authority or agency; all costs and fees associated with preparing any other notices, reports, or filings to be prepared in the course of administering Individual Settlement Amounts; and any other costs and fees incurred and/or charged by the Settlement Administrator in connection with the execution of its duties under this Agreement.

2. DESCRIPTION OF THE LITIGATION

2.1 On February 14, 2023, Plaintiff sent notice to the LWDA to exhaust administrative remedies under the PAGA for failure to pay overtime wages, failure to pay minimum wages, failure to provide meal periods or pay premiums in lieu thereof, failure to provide rest periods or pay premiums in lieu thereof, failure to provide accurate wage statements, failure to pay final wages, violation of Labor Code section 558, failure to maintain accurate records, and failure to provide paid sick leave. On November 29, 2023 Plaintiff sent an amended notice to the LWDA to exhaust administrative remedies under the PAGA for failure to pay travel time, failure to reimburse expenses, and failure to pay accrued vacation at separation. On December 5, 2023, Plaintiff sent a second amended notice to the LWDA to clarify the scope of the PAGA Claim Period Plaintiff was seeking exhaustion for. The LWDA did not respond to the notices within the statutorily required time frame and, as such, Plaintiff became authorized to act as a Private Attorneys General on all alleged PAGA claims.

2.2 On February 15, 2023, Plaintiff filed a class action Complaint in Sacramento County Superior Court on behalf of himself and Class Members. Plaintiff filed a First Amended Complaint on approximately May 25, 2023 to add a PAGA cause of action based on the violations alleged in the February 14, 2023 notice to the LWDA on behalf of himself and Aggrieved Employees. Plaintiff intends to file a Second Amended Complaint to match the scope of the resolution reached by the Parties, adding claims for unpaid travel time, failure to reimburse expenses and failure to pay accrued vacation.

2.3 Through informal discovery, Defendant and Defendant's Counsel provided Class Counsel with copies of all applicable versions of its policies and procedures, employee handbooks, information on Class Members including, but not limited to, Class Members' workweeks, dates of employment, total number of Class Members, their rates of pay, and pay periods as well as timecard data and payroll reports for a randomly selected sample of Class Members.

1 2.4 On October 9, 2023, the Parties participated in a lengthy mediation with private mediator
2 Russ J. Wunderli. At the conclusion of the mediation, the Parties were able to come to a resolution. At all
3 times, the Parties' settlement negotiations have been non-collusive, adversarial, and at arm's length.

4 2.5 Discussions between Plaintiff and Class Counsel, between counsel for the Parties, document
5 productions, extensive legal analysis, the provision of information by Defendant to Plaintiff and the
6 detailed analysis of the records, including expert analysis, have permitted each side to assess the relative
7 merits of the claims and the defenses to those claims.

8 2.6 In the Action, Plaintiff contends that Defendant violated California law by 1) failing to
9 accurately record and maintain employees' hours worked; 2) failing to pay for all hours worked, including
10 travel time; 3) failing to authorize and permit putative class members to take all meal and rest periods; 4)
11 failing to include the inclusive dates of the pay period and employees' last 4 digits of their social security
12 number or employee identification number on wage statements issued to putative class members; 5) failing
13 to incorporate the value of prevailing wage rates into employees' paid sick leave and regular rates of pay
14 for the purpose of calculating overtime wages on non-prevailing wage jobs; 6) failing to reimburse the use
15 of personal cell phones and vehicles; and 7) failing to pay accrued and unused vacation pay at all or at an
16 employee's final regular rate of pay at the time of separation. Defendant has denied each of Plaintiff's
17 claims and Defendant has denied that this Action is appropriate for class certification for anything other
18 than settlement purposes. The agreed upon Gross Settlement Amount was reached after evaluating the
19 Parties' theories of potential exposure for the underlying claims and the class data supporting these claims.
20 The Parties, with the assistance of the mediator, also assessed appropriate discounts to the potential liability
21 based on Defendant's factual and legal contentions and defenses.

22 2.7 The Parties agree that the above-described investigation and evaluation, as well as discovery
23 and the information exchanged to date, are more than sufficient to assess the merits of the respective
24 Parties' positions and to compromise the issues on a fair and equitable basis. Plaintiff, Class Counsel,
25 Defendant, and Defendant's Counsel have concluded that it is desirable that the Action be settled in a
26 manner and upon such terms and conditions set forth herein in order to avoid further expense,
27 inconvenience and distraction of further legal proceedings, and the risk of an adverse outcome each of the
28 Parties potentially face in the Action. Therefore, the Parties desire to resolve the claims in the Action.

1 Plaintiff, Class Counsel, Defendant, and Defendant's Counsel are of the opinion that the Agreement for the
2 consideration and terms set forth herein is fair, reasonable, and adequate in light of all known facts and
3 circumstances.

4 **3. THE CONDITIONAL NATURE OF THIS AGREEMENT**

5 3.1 This Agreement and all associated exhibits or attachments are made for the sole purpose of
6 settling the Action. This Agreement and the settlement it evidences are made in compromise of disputed
7 claims. Because the Action was pled as a class action, this Agreement must receive preliminary and final
8 approval by the Court. Accordingly, the Parties enter into this Agreement and associated settlement on a
9 conditional basis. If the Effective Date does not occur, or if the Court's approval of the settlement is
10 reversed or materially modified on appellate review, this Agreement shall be deemed null and void; it shall
11 be of no force or effect whatsoever; it shall not be referred to or utilized for any purpose whatsoever; and
12 the negotiation, terms and entry of the Agreement shall remain subject to the provisions of California
13 Evidence Code Sections 1119 and 1152, Federal Rule of Evidence 408, and any other analogous rules of
14 evidence that may be applicable.

15 3.2 Defendant has denied all claims as to liability, damages, liquidated damages, penalties,
16 interest, fees, restitution, injunctive relief and all other forms of relief asserted in the Action. Defendant
17 has agreed to resolve the Action via this Agreement, but to the extent this Agreement is deemed void or
18 the Effective Date does not occur, Defendant does not waive, but rather expressly reserves, all rights to
19 challenge all such claims and allegations in the Action upon all procedural and factual grounds, including,
20 without limitation, the ability to challenge class or collective treatment on any grounds, as well as to assert
21 any and all other potential defenses or privileges.

22 **4. SCOPE OF THE CLASS**

23 4.1 The scope of the class of individuals encompassed under the Agreement and subject to all
24 obligations and duties required under the Agreement, shall include all Class Members as defined in Section
25 1.5 and all Aggrieved Employees as defined in Section 1.2. However, it shall not include any Class
26 Members who submit valid and timely requests to opt-out of the Agreement and settlement, as set forth in
27 Section 7.5.1.
28

1 4.2 Only Participating Class Members and Aggrieved Employees are entitled to recover under
2 this Agreement.

3 4.3 Any person who believes that he or she is a Class Member or Aggrieved Employee and
4 wishes to participate in the Agreement, but did not receive a Notice of Settlement because his or her name
5 did not appear on the class list provided to the Settlement Administrator prior to mailing, may submit a
6 data request to the Settlement Administrator. The data request must contain all of the following
7 information: (a) the full name and, if applicable, Social Security Number of the individual making the
8 request; (b) the name used by such employee as of the time his or her employment with Defendant ended;
9 (c) the individual's dates of employment with Defendant; and (d) a return address to which a response may
10 be sent. Every data request must be postmarked on or before the conclusion of the Notice Period or
11 otherwise submitted to the Settlement Administrator such that it is received before the conclusion of the
12 Notice Period. Upon receipt of any data requests, the Settlement Administrator shall promptly (in no event
13 more than two business days) transmit the data requests to Defendant's Counsel and request that Defendant
14 review their records.

15 4.4 If Defendant agrees that the person listed in a data request is a Class Member and/or
16 Aggrieved Employee, the Settlement Administrator shall promptly mail a Notice of Settlement to the
17 person who submitted the data request, at the address designated for that purpose in the data request. All
18 provisions of this Agreement relating to the Notice of Settlement shall apply to Notice of Settlements sent
19 in response to data requests, and any person who submits a data request and is sent a Notice of Settlement
20 in response shall be treated by the Settlement Administrator as a Class Member and/or Aggrieved
21 Employee for all other purposes.

22 4.5 If Defendant does not agree that the person listed in a data request is a Class Member and/or
23 Aggrieved Employee, Defendant's Counsel and Class Counsel shall attempt to resolve any such dispute in
24 good faith within seven (7) calendar days of Class Counsel being advised in writing of the data request
25 dispute, with any identifying information other than an employee identification number redacted.
26 Defendant's records shall control unless the individual submitting the data request provides persuasive
27 evidence to doubt the accuracy of those records. Each data request dispute that Defendant's Counsel and
28 Class Counsel cannot timely resolve shall be resolved by the Settlement Administrator. The Settlement

1 Administrator must accept and weigh all the evidence provided in a good faith attempt to resolve the
2 dispute. The Settlement Administrator must resolve any dispute submitted to it within seven (7) calendar
3 days after Defendant's Counsel and Class Counsel submit the dispute to the Settlement Administrator. The
4 decision by the Settlement Administrator shall be final as between the parties, subject to Court review.

5 **5. TERMS OF THE SETTLEMENT**

6 The Parties agree as follows:

7 5.1 Gross Settlement Amount: In consideration and exchange for the releases described in
8 Section 6, Defendant shall pay the Gross Settlement Amount (\$417,500.00). Funding of the Gross
9 Settlement Amount shall occur within 30 calendar days after the Effective Date to be held in trust in a QSF
10 by the Settlement Administrator. The Gross Settlement Amount includes payments to Participating Class
11 Members, Aggrieved Employees, all attorneys' fees, costs and litigation expenses related to the Action
12 incurred to date, as well as all such fees and costs incurred in documenting the Agreement, administering
13 the Agreement (including Settlement Administrator Costs), and obtaining final approval of the Agreement,
14 the Enhancement Payment to the Class Representative and the PAGA Payment. Any monies necessary to
15 satisfy Defendant's tax obligations (*e.g.* employer FICA, FUTA and SDI contributions on wage payments)
16 on any wage payments distributed to Participating Class Members will be paid in addition to the Gross
17 Settlement Amount.

18 5.2 Attorneys' Fees and Costs: Class Counsel will apply to the Court for attorney's fees of 35%
19 of the Gross Settlement Amount, which shall be paid from the Gross Settlement Amount. Defendant has
20 agreed to not oppose Class Counsel's application for attorneys' fees so long as it does not exceed the 35%
21 threshold. Class Counsel will also be entitled to reimbursement for advanced litigation expenses not to
22 exceed \$10,000.00, which shall be paid from the Gross Settlement Amount. Defendant has agreed to not
23 oppose Class Counsel's request for reimbursement for advanced litigation expenses so long as they do not
24 exceed the \$10,000.00 threshold. The Settlement Administrator will issue Class Counsel an IRS Form
25 1099 for the attorneys' fees and costs paid under this Agreement. In the event that the Court awards less
26 than the requested attorney's fees and/or costs, the portion of the requested amounts not awarded to Class
27 Counsel shall be added to the Net Settlement Amount to be distributed to Participating Class Members on
28 a pro rata basis.

1 5.3 Settlement Administrator Costs: The Settlement Administrator Costs shall be paid from the
2 Gross Settlement Amount and shall not exceed \$10,000.00. The difference between any actual costs and
3 the allocated \$10,000.00 shall be added to the Net Settlement Amount to be distributed to Participating
4 Class Members on a pro rata basis.

5 5.4 Enhancement Payment: Class Counsel, on behalf of Plaintiff, shall apply to the Court for
6 an Enhancement Payment to the Class Representative in an amount not to exceed Ten Thousand Dollars
7 and No Cents (\$10,000.00) to compensate for the risks, time, and expense of his involvement in the Action
8 and securing the benefits of this Agreement for Class Members. The Enhancement Payment is in addition
9 to the Individual Settlement Amount Plaintiff would otherwise be due under the Agreement as a
10 Participating Class Member. Defendant has agreed to not oppose Class Counsel's request for an
11 Enhancement Payment to Plaintiff so long as it does not exceed the amount stated herein. The
12 Enhancement Payment will be designated as a non-wage payment and reported on an IRS Form 1099-
13 MISC. In the event that the Court awards less than the Enhancement Payment amount requested, then any
14 portion of the requested amount not awarded to the Class Representative shall be added to the Net
15 Settlement Amount to be distributed to Participating Class Members on a pro rata basis.

16 5.5 PAGA Payment: Forty-one Thousand Seven Hundred Fifty Dollars and No Cents
17 (\$41,750.00) of the Gross Settlement Amount shall be allocated to resolving claims under the PAGA.
18 Seventy-Five percent (75%) of the PAGA Payment will be paid to the LWDA and Twenty-Five percent
19 (25%) will be paid to Aggrieved Employees on a pro rata basis as described below in Section 5.8. Any
20 amount not approved by the Court for the allocated PAGA Payment shall be added to the Net Settlement
21 Amount to be distributed to Participating Class Members on a pro rata basis.

22 5.6 Treatment of Residue and Cy Pres: For any portion of the Net Settlement Amount or PAGA
23 Payment allocated to Participating Class Members and/or Aggrieved Employees that were not claimed by
24 cashing their respective settlement checks before the deadline to do so, that remaining amount shall be paid
25 to Sacramento Food Bank and Family Services under the doctrine of *cy pres*. No portion of the Gross
26 Settlement Amount will revert to Defendant for any reason.

27 5.7 No Additional Benefits Contributions: All Individual Settlement Amounts paid to
28 Participating Class Members and Aggrieved Employees shall be deemed to be income solely in the year in

1 which such amounts were actually received. It is expressly understood and agreed that the receipt of such
2 Individual Settlement Amounts will not entitle any Participating Class Member or Aggrieved Employee to
3 any new or additional compensation or benefits under any company bonus or other compensation or benefit
4 plan or agreement in place during the period covered by the Agreement, nor will it entitle any Participating
5 Class Member Aggrieved Employee to any increased retirement, 401(k) and/or 403(b) benefits or matching
6 benefits, or deferred compensation benefits. It is the intent of this Agreement that the Individual Settlement
7 Amounts provided for in this Agreement are the sole payments to be made by Defendant to the Participating
8 Class Members and Aggrieved Employees in connection with this Agreement (notwithstanding any
9 contrary language or agreement in any benefit or compensation plan document that might have been in
10 effect during the period covered by this Agreement).

11 5.8 Pro Rata Distribution Formula: Payment to Participating Class Members and Aggrieved
12 Employees of their Individual Settlement Amount will not require the submission of a claim form. A Net
13 Settlement Amount will be determined by subtracting from the Gross Settlement Amount any amounts for
14 approved attorneys' fees and costs, any Enhancement Payment to the Class Representative, the Settlement
15 Administrator Costs, and the PAGA Payment. Each Class Member's share will be initially determined by
16 dividing their total Qualifying Workweeks within the Class Period by the total Qualifying Workweeks of
17 all Class Members. That fraction will then be multiplied by the Net Settlement Amount to arrive at the
18 Class Member's individual share of the Net Settlement Amount. Any funds allocated to Class Members
19 under this formula who timely opt out of the Settlement will be redistributed to Participating Class
20 Members on a pro rata basis, *i.e.* each Participating Class Member's share will be determined by dividing
21 their total Qualifying Workweeks within the Class Period by the total Qualifying Workweeks of all
22 Participating Class Members and that fraction will then be multiplied by the Net Settlement Amount to
23 arrive at the Participating Class Member's individual share of the Net Settlement Amount. Each Aggrieved
24 Employee's share of the 25% portion of the PAGA Payment will be determined by dividing their total
25 Qualifying Workweeks within the PAGA Claim Period by the total Qualifying Workweeks by all
26 Aggrieved Employees within the PAGA Claim Period. That fraction will then be multiplied by the 25%
27 portion of the PAGA Payment to arrive at the Aggrieved Employee's individual share.

1 5.9 Tax Allocation: The Parties recognize that the Individual Settlement Amounts to be paid to
2 Participating Class Members and/or Aggrieved Employees reflect a settlement of a dispute over claimed
3 penalties and wages. The Settlement Administrator shall calculate the employer's share of payroll taxes
4 on the amounts paid to Participating Class Members as wages as well as calculating all required
5 withholdings and deductions from said wage payments. The characterization of Individual Settlement
6 Amounts to Participating Class Members and Aggrieved Employees are as follows:

7 5.9.1 One third (1/3) of each Participating Class Members' Individual Settlement Amount
8 shall be allocated for payment of disputed wages and shall be subject to required employer taxes.
9 Participating Class Members shall receive an IRS Form W-2 for reporting of this portion of their Individual
10 Settlement Amount.

11 5.9.2 Two thirds (2/3) of each Participating Class Members' Individual Settlement
12 Amount shall be allocated for disputed statutory penalties and interest, and no amount shall be deducted
13 for any taxes. This portion of the Individual Settlement Amount consists of other income, not wages, for
14 which the Participating Class Members shall receive an IRS Form 1099-MISC.

15 5.9.3 The entirety (100%) of each Aggrieved Employee's share of the 25% portion of the
16 PAGA Payment shall be allocated for payment of disputed civil penalties, and no amount shall be deducted
17 for any taxes. This portion of the Individual Settlement Amount consists of other income, not wages, for
18 which the Aggrieved Employees shall receive an IRS Form 1099-MISC.

19 5.10 Participating Class Members and Aggrieved Employees shall be solely responsible for the
20 reporting and payment of their share of any federal, state and/or municipal income or other taxes on
21 payments made pursuant to this Agreement, and shall hold the Parties, Class Counsel, and Defendant's
22 Counsel free and harmless from any claims resulting from treatment of such payments as non-taxable,
23 including the treatment of such payments as not subject to withholding or deduction for payroll and
24 employment taxes. No party has made any representation to any of the other Parties as to the taxability of
25 any payments pursuant to this Agreement, including the payments to Participating Class Members, the
26 payments to Aggrieved Employees, the payments to Class Counsel, the payments to the Class
27 Representative, the payroll tax liability of Defendant, or the allocation of the Net Settlement Amount or
28

PAGA Payment to wage and non-wage income as provided in this Section, or otherwise as to tax implications of any provision of this Agreement.

5.11 No Additional Contribution by Defendant: Defendant's monetary obligation under this Agreement is limited to the Gross Settlement Amount and any employer side payroll taxes owed on amounts characterized as wages under this Agreement. All other costs and expenses arising out of or in connection with the performance of this Agreement shall be paid from the Gross Settlement Amount, unless expressly provided otherwise herein. However, in the event this agreement is deemed null and void as described in Section 3 because the Court, in its independent determination, finds that the Agreement does not meet the standards for settlement approval, then Defendant and Plaintiff shall be equally responsible for the costs of the Settlement Administrator incurred between the date the Agreement was executed and the date of such event.

5.12 Certification For Settlement Purposes: The Parties agree that, for purposes of settlement only, certification of the class as defined in Section 1.5 and 4.1 is appropriate and the requisites for establishing class certification have been met and are met.

5.13 Adequacy of Class Counsel and Class Representative: The Parties agree that, for purposes of settlement only, Class Counsel and Plaintiff are adequate representatives for Class Members and Aggrieved Employees.

6. RELEASE

6.1 Release of Claims by Participating Class Members: Upon the Effective Date, all Participating Class Members will be deemed to fully, finally and forever release the Released Class Claims as to all Released Parties. In addition, on the Effective Date, all Participating Class Members and their successors in interest will be permanently enjoined and forever barred from prosecuting any of Released Class Claims against any of the Released Parties.

6.2 Release of Claims by Aggrieved Employees: Upon the Effective Date, all Aggrieved Employees will be deemed to fully, finally and forever release the Released PAGA Claims as to all Released Parties. In addition, on the Effective Date, all Aggrieved Employees and their successors in interest will be permanently enjoined and forever barred from prosecuting any of the Released PAGA Claims against any of the Released Parties.

1 6.3 Release by Plaintiff: Upon the Effective Date, Plaintiff will be deemed to fully, finally and
2 forever release the Released Class Claims, Released PAGA Claims, and Class Representative's Released
3 Claims as to all Released Parties. In addition, on the Effective Date, Plaintiff and any successors in interest
4 will be permanently enjoined and forever barred from prosecuting any of the Released Class Claims,
5 Released PAGA Claims, and Class Representative's Released Claims against any of the Released Parties.
6 Plaintiff has read Section 1542 of the Civil Code of the State of California, which provides as follows:

7 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR
8 OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
9 FAVOR AT THE TIME OF EXECUTING THE RELEASE, AND THAT, IF KNOWN BY
10 HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER
11 SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

12 Plaintiff understands that Section 1542 gives the right not to release existing claims of which he is not now
13 aware, unless Plaintiff voluntarily chooses to waive this right. Having been so apprised, Plaintiff
14 nevertheless voluntarily waives the rights described in Section 1542, and elects to assume all risks for
15 claims that now exist in his favor, known or unknown.

16 7. **SETTLEMENT ADMINISTRATION**

17 7.1 Duties of Settlement Administrator: The Settlement Administrator shall be responsible for:
18 1) receiving Class Member and Aggrieved Employee contact information and confirming addresses are
19 valid; 2) calculating estimated Individual Settlement Amounts and any and all taxes associated with the
20 Individual Settlement Amounts, including employer taxes; 3) taking appropriate steps to trace and locate
21 any individual Class Members and Aggrieved Employee whose address or contact information as provided
22 to the Settlement Administrator is inaccurate or outdated and mailing the Notice of Settlement to Class
23 Members; 4) providing notification to the appropriate state and federal officials of this Agreement as
24 required under the law; 5) receiving, independently reviewing, and resolving any challenges (in
25 consultation with Class Counsel and Defendant's Counsel) from Class Members or Aggrieved Employees,
26 including any associated documentation, regarding their Qualified Workweek calculations; 6) receiving
27 and serving on Class Counsel, Defendant's Counsel, and the Court, copies of any written objections, and/or
28 any opt out statements; 7) establishing a toll free telephone line and responding to inquiries and requests

1 for information or assistance from Class Members and/or Aggrieved Employees; 8) maintaining a QSF; 9)
2 determining and paying the final amounts due to be paid under the Agreement after resolution of all
3 challenges, disputes, opt-outs, awarded attorneys' fees and costs, Settlement Administrator Costs, PAGA
4 Payment, taxes, any Enhancement Payments, and for funds that cannot be distributed due to the inability
5 to locate Class Members or Aggrieved Employees; 10) determining the validity of any disputes or late opt-
6 outs by previously unidentified Class Members or Aggrieved Employees; 11) paying any residual funds
7 from uncashed checks; 12) reporting to Class Counsel and Defendant's Counsel regarding the statistics of
8 the administration, including (a) the number of initial Notice of Settlements mailed; (b) the number of
9 forwarded Notice of Settlements; (c) the number of re-mailed Notice of Settlements; (d) the number of
10 total undeliverable Notice of Settlements; (e) the number of address traces performed for undeliverable
11 Notice of Settlements; (f) the number of Notice of Settlements undeliverable from traced addresses; (g) the
12 number of total objections received; (h) the number of opt-out requests received; (i) the number of disputes
13 received; (j) the number of disputes resolved; 13) providing a declaration to the Court regarding the final
14 statistics of the administration and compliance with all payment obligations under the Agreement; 14)
15 completing all necessary tax reporting on the QSF and payment of the Individual Settlement Amounts to
16 Participating Class Members and Aggrieved Employees; 15) calculating and transmitting employer tax
17 payments to the appropriate taxing authorities and all associated reporting; 16) translating the Notice of
18 Settlement into Spanish and 17) carrying out other related tasks as necessary to effectuate the terms of this
19 Agreement and any Order of the Court. All disputes relating to the Settlement Administrator's ability and
20 need to perform its duties shall be referred to the Court, if necessary, which will have continuing
21 jurisdiction over the terms and conditions of this Agreement, until all payments and obligations
22 contemplated by the Agreement have been fully executed.

23 7.2 Notice to Class Members and Aggrieved Employees: Defendant represents and warrants
24 that Class Members and Aggrieved Employees are able to read and write in English and/or Spanish such
25 that no translation of the Notice of Settlement into a language other than Spanish is necessary. The Notice
26 of Settlement will provide Class Members and Aggrieved Employees with a summary of the terms and
27 conditions of the Agreement, how to participate in the settlement, how to object to the Agreement, how to
28 dispute the individual's Qualifying Workweeks, and how to opt-out from the Agreement. The Notice of

1 Settlement will also inform Class Members and Aggrieved Employees of the Gross Settlement Amount,
2 Net Settlement Amount, proposed attorneys' fees and costs allocations, any proposed Enhancement
3 Payments, proposed Settlement Administrator Cost allocations, proposed PAGA Payment allocations, the
4 scope of the class, the nature and extent of the released claims, dates set for a fairness hearing and hearing
5 on Class Counsels' motion for attorneys' fees and costs. The Notice of Settlement shall include information
6 regarding Class Member's and Aggrieved Employee's estimated Individual Settlement Amount. The
7 Notice of Settlement will provide information on how to access electronic copies online of the Notice of
8 Settlement, any motions for approval of the Agreement, any motions for approval of attorneys' fees and
9 costs, and any other documents as the Court directs.

10 7.3 Class Member Data and Mailing: No later than fourteen (14) calendar days after the
11 Preliminary Approval Date, Defendant shall provide the Settlement Administrator with the name, last
12 known mailing address, last known telephone number, Social Security Number, weeks Class Members
13 worked during the Class Period, eeks Aggrieved Employees worked during the PAGA Claim Period and
14 any other information the Settlement Administrator needs to effectuate notice to Class Members and
15 Aggrieved Employees as outlined herein. The Settlement Administrator shall review the data to determine
16 the number of Qualifying Workweeks for each Class Member and Aggrieved Employee. No later than
17 fourteen (14) calendar days after receipt of such address information, the Settlement Administrator will
18 perform a national change of address ("NCOA") search, update the addresses per the results of the NCOA
19 search, and then mail the Notice of Settlement, substantially in the form attached as Exhibit 1, to each Class
20 Member and Aggrieved Employee by first-class mail, postage prepaid. The Settlement Administrator shall
21 maintain all information received from Defendant confidential to itself, and Defendant's Counsel.
22 However, Class Counsel shall be able to review the breakdown of Qualified Workweeks and estimated
23 Individual Settlement Amounts for Class Members and Aggrieved Employees prior to mailing for quality
24 assurance provided the personal identifying information is redacted and/or omitted.

25 7.4 Returned and/or Re-mailed Notice of Settlements: In the event that a Notice of Settlement
26 is returned to the Settlement Administrator as undeliverable on or before the conclusion of the Notice
27 Period, the Notice of Settlement shall be sent to the forwarding address affixed thereto within five (5)
28 calendar days. If no forwarding address is provided, then the Settlement Administrator shall promptly

attempt to determine a correct address using a skip-trace, computer or other search using the name, address and/or Social Security number of the individual involved, and shall then perform a single re-mailing within five (5) calendar days to any more recent address found as a result of the search. Following each search that does not result in a corrected address, for those Class Members who appear to be current employees of Defendant at the time of the Preliminary Approval Date, the Settlement Administrator shall contact Defendant's Counsel for assistance and Defendant shall cooperate in good faith with the Settlement Administrator's reasonable efforts to obtain valid mailing addresses for Class Members to the extent they are active employees of Defendant. In the event the Notice of Settlement is forwarded to a new address and/or re-mailed to a Class Member, the deadline for the Class Member to submit any request to opt-out, a dispute, or an objection shall be the end of the Notice Period or 10 days from the date of the re-mailing/forwarding to a new address, whichever is later. In the event the procedures in this Section are followed and the Class Member does not timely and properly request to opt-out, the Class Member shall be bound by all terms of the Agreement, including the releases contained in Section 6.

7.5 Responses to Notice of Settlement:

7.5.1 *Opt-Outs:* The Notice of Settlement shall provide that Class Members who wish to exclude themselves from the Agreement must submit a request to opt-out as provided in this Section. The request to opt-out must (a) state the Class Member's full name and date of birth; (b) a statement that he or she does not want to be a Class Member, does not want to participate in the settlement, and/or wants to be excluded from the settlement; (c) identify the case name and number (i.e. Martin v. Western Engineering Contractors, Inc. , Case No. 34-2023-00334816); (d) be signed; and (e) be post-marked no later than the conclusion of the Notice Period or the re-mailing timeline stated in Section 7.4. The Class Member must personally sign the request to opt-out. No request to opt-out may be made on behalf of a group of Class Members. The date of the postmark on the return-mailing envelope shall be the exclusive means used to determine whether a request to opt-out has been timely submitted. Any Class Member who requests to opt-out of the Agreement will not be entitled to any portion of the Net Settlement Amount nor will they have any right to object, appeal or comment thereon. The name of any Class Member who submits a valid and timely opt out request will be specifically identified in any proposed order granting final approval. Class Members who fail to submit a valid and timely request to opt-out shall be bound by all terms of the

1 Agreement and any order or final judgment thereon. Regardless of whether an Aggrieved Employee opts
2 out of being a Class Member, they will still receive their share of the PAGA Payment as Aggrieved
3 Employees cannot opt out of this Agreement as it relates to the PAGA Payment or Released PAGA Claims.

4 7.5.2 *Objection Procedures:* Any Class Member who does not opt-out but who wishes to
5 object to this Agreement or otherwise to be heard concerning this Agreement shall send their written
6 objections to the Settlement Administrator and also serve copies of the objections on Class Counsel and
7 Defendant's Counsel. The Notice of Settlement shall make clear that the Court can only approve or deny
8 the Agreement, not change the terms of the Agreement. The objection must (a) state the Class Member's
9 full name and date of birth; (b) provide evidence that the individual is, in fact, a Class Member; (c) state
10 the reasons for the objection(s), including any supporting documentation; (d) identify the case name and
11 number (*i.e.* Martin v. Western Engineering Contractors, Inc. , Case No. 34-2023-00334816) (e) be signed;
12 and (f) be post-marked no later than the conclusion of the Notice Period or the re-mailing timeline stated
13 in Section 7.4. The Notice of Settlement will inform the Class Member that they should also file a notice
14 of intent to appear with the Court and serve the notice on Class Counsel and Defendant's Counsel, if they
15 intend to appear at the final approval hearing.

16 7.5.3 *Dispute Procedures:* Any Class Member who disputes the number of Qualifying
17 Workweeks on the Notice of Settlement shall contact the Settlement Administrator. The dispute must (a)
18 identify the nature of the dispute; (b) provide any information or documentation supporting the dispute; (c)
19 be signed; and (d) be post-marked no later than the conclusion of the Notice Period or the re-mailing
20 timeline stated in Section 7.4. The Settlement Administrator shall promptly (in no event more than two
21 business days) forward all such disputes to Defendant's Counsel and request that Defendant review the
22 dispute. Defendant's records shall presumptively control unless the Class Member can produce
23 documentation evidencing other periods of employment worked. If Defendant agrees with submitted
24 information, the Class Member shall be credited or subtracted Qualifying Workweeks in accordance with
25 their submitted dispute and that final number of Qualified Workweeks shall govern the calculation of that
26 Class Member's Individual Settlement Amount. If Defendant disagrees with the submitted information,
27 Defendant's Counsel will promptly advise Class Counsel of the dispute, which includes turning over any
28 documentation submitted by the Class Member, with any identifying information other than an employee

1 identification number redacted, as part of the dispute. Defendant's Counsel and Class Counsel shall attempt
2 in good faith to resolve any such dispute within five (5) calendar days of Class Counsel being advised of
3 the dispute. Each dispute that Defendant's Counsel and Class Counsel cannot timely resolve shall be
4 resolved by the Settlement Administrator, subject to Court review.

5 7.5.4 *Deficient Opt-Outs, Objections, or Disputes:* In the event that a deficient opt-out,
6 objection, or dispute is received on or before the conclusion of the Notice Period, the Settlement
7 Administrator shall mail a letter to the Class Member within five (5) calendar days informing them of the
8 deficiency. If a deficiency letter is mailed to a Class Member, the deadline for the Class Member to cure
9 the deficiency shall be the end of the Notice Period or 10 calendar days from the date of the deficiency
10 letter, whichever is later.

11 7.6 Due Process Acknowledgement: Compliance with the procedures set forth in Sections 7.1
12 to 7.5.4 shall constitute due and sufficient notice to Class Members of the Action and the Agreement and
13 shall satisfy Class Members' due process rights. Nothing else shall be required of the Parties, Class
14 Counsel or Defendant's Counsel to provide notice of the proposed Agreement.

15 7.7 Settlement Administrator Declaration Regarding Notice Period: Within fourteen (14)
16 calendar days after the conclusion of the Notice Period, the Settlement Administrator shall provide Class
17 Counsel and Defendant's Counsel with a signed declaration under penalty of perjury providing a complete
18 and detailed report regarding the statistics and responses of settlement administration to date and all the
19 Settlement Administrators' obligations under Sections 5.8 to 5.9.3 and 7.1 to 7.5.4.

20 7.8 Settlement Administrator Payments to Participating Class Members, Class Counsel and
21 Plaintiff: Within seven (7) calendar days after the Effective Date and the Court's determination of the
22 amount of attorneys' fees and costs payable to Class Counsel, the Enhancement Payment payable to
23 Plaintiff, the PAGA Payment, and Settlement Administrator Costs, the Settlement Administrator shall
24 calculate the final Net Settlement Amount, the final Individual Settlement Amounts for Participating Class
25 Members and/or Aggrieved Employees, any applicable taxes thereon, and report the results of these
26 calculations Class Counsel and Defendant's Counsel. Defendant shall wire the Gross Settlement Amount
27 and applicable taxes necessary to fund the Settlement as described in Section 5.1 to the Settlement
28 Administrator within thirty (30) calendar days after the Effective Date to be to be held in trust in a QSF.

1 Within seven (7) calendar days after Defendant fund the settlement, the Settlement Administrator shall
2 deliver payment of Class Counsels' attorney's fees and costs, the Enhancement Payment payable to
3 Plaintiff, the 75% portion of the PAGA Payment payable to the LWDA, Settlement Administrator Costs,
4 and payment to Participating Class Members and/or Aggrieved Employees as required under this
5 Agreement and approved by Court.

6 7.8.1 The Settlement Administrator shall wire the Court-approved attorneys' fees and
7 costs to Class Counsel unless another method is requested by Class Counsel. Class Counsel shall provide
8 the Settlement Administrator with the pertinent taxpayer identification number and payment instructions
9 after the Final Approval Date.

10 7.8.2 The Settlement Administrator shall send a check by mail for the Court-approved
11 Enhancement Payment to the Class Representative, care of Class Counsel unless another method is
12 requested by Class Counsel.

13 7.8.3 Only Participating Class Members and Aggrieved Employees will receive their
14 Individual Settlement Amount.

15 7.8.4 The Settlement Administrator shall remit and report the applicable portions of the
16 payroll tax payment and employer tax payment to the appropriate taxing authorities on a timely basis
17 pursuant to its duties under this Agreement. Defendant agrees to reasonably cooperate with the Settlement
18 Administrator to the extent necessary to determine the amount of the payroll tax payment required.

19 7.9 Settlement Check Expiration and Uncashed Checks: The Settlement Administrator shall
20 issue Individual Settlement Amounts to Participating Class Members and Aggrieved Employees in the
21 form of a check, which shall become null and void if not deposited within one hundred eighty (180)
22 calendar days of issuance. After one hundred eighty (180) calendar days of issuance, the checks shall be
23 voided and funds from all uncashed checks shall be transmitted in accordance with Section 5.6. The
24 Settlement Administrator shall deliver these funds within fourteen (14) calendar days after the check
25 cashing deadline.

26 7.10 Settlement Administrator Declaration Regarding Compliance and Settlement
27 Administration: Within twenty-one (21) calendar days after the last day for Participating Class Members
28 and Aggrieved Employees to cash their settlement checks, the Settlement Administrator shall provide Class

Counsel and Defendant's Counsel with a signed declaration under penalty of perjury providing a complete and detailed report regarding the settlement administration documenting that all payments under the Agreement have been made, that the Court's final approval order has been complied with, and that all the obligations of the Settlement Administrator have been completed.

8. PRELIMINARY SETTLEMENT ADMINISTRATION SCHEDULE

8.1 The schedule may be modified depending on whether and when the Court grants necessary approvals, orders notice to Class Members and Aggrieved Employees, and sets further hearings. The schedule may also be modified to correct clerical errors and to reflect the provisions in the Agreement as described above. In the event of such modification, the Parties shall cooperate to complete the settlement procedures as expeditiously as reasonably practicable. The preliminary schedule for notice, approval, and payment procedures carrying out the Agreement is as follows:

Last day for Defendant to provide Settlement Administrator with Class Member and Aggrieved Employee information	Within 14 calendar days after the Preliminary Approval Date
Last day for Settlement Administrator to complete NCOA search, update Class Member and Aggrieved Employee mailing information, and mail Notice of Settlement	Within 14 calendar days after the Settlement Administrators' receipt of Class Members' information from Defendant
Last day for Class Members to opt-out, submit disputes, submit objections, and submit data requests	60 calendar days after mailing of Notice of Settlement or within 10 days after Notice of Settlement is re-mailed, whichever is later
Last day for Settlement Administrator to provide Parties with signed declaration reporting on settlement administration statistics	Within 14 calendar days after end of the Notice Period
Last day for Settlement Administrator to calculate the final Net Settlement Amount, the final Individual Settlement Amounts for Participating Class Members and/or Aggrieved Employees, any applicable taxes thereon, and report the results of these calculations to Class Counsel and Defendant's Counsel	Within 7 calendar days after the Effective Date

Last day for Defendant to fund settlement	Within 30 calendar days after the Effective Date
Last day for Settlement Administrator to deliver payment of Class Counsel's attorney's fees and costs, Enhancement Payments, PAGA Payment, Settlement Administrator Costs, payment to Participating Class Members, and payment to Aggrieved Employees	Within 7 calendar days after Defendant has funded the settlement
Last day for Participating Class Members and Aggrieved Employees to cash settlement checks	180 calendar days after issuance of checks to Participating Class Members and Aggrieved Employees
Last day for Settlement Administrator to deliver value of uncashed settlement checks to <i>cy pres</i> beneficiaries	Within 14 calendar days after settlement check cashing deadline
Last day for Settlement Administrator to provide Parties with compliance declaration	Within 21 calendar days after settlement check cashing deadline

9. DUTIES OF THE PARTIES

9.1 Preliminary Approval: The Parties will cooperate in obtaining, through an unopposed motion to be filed as soon as reasonably practicable, an order from the Court preliminarily approving this Agreement at the earliest possible date concurrently with the Court's certification of the Action as a class action for settlement purposes. The Parties further agree to fully cooperate in the drafting and/or filing of any further documents or filings reasonably necessary to be prepared or filed, shall take all steps that may be requested by the Court relating to, or that are otherwise necessary to the approval and implementation of this Agreement and shall otherwise use their respective best efforts to obtain certification for settlement purposes, approval of, and implementation of this Agreement. The Parties will submit this Agreement to the Court for preliminary approval of its terms and for approval of the steps to be taken to obtain its final approval. Within one week of signing this Agreement Class Counsel shall provide a draft of the Preliminary Approval Motion to Defendant's Counsel. Defendant's Counsel will provide comments and/or proposed revisions within one week after receipt of the draft Preliminary Approval Motion from Class Counsel. With regard to the final approval documents, a similar one-week maximum review and response

time shall be observed by the Parties. The Parties will request that the Court's preliminary approval of this Agreement be embodied in an Order Granting Preliminary Approval of Class Action and PAGA Settlement.

9.1.1 Plaintiff's motion shall seek an order: 1) Preliminarily approving the Agreement; 2) Approving as to form and content the proposed Notice of Settlement; 3) Directing the mailing of the Notice of Settlement by first class mail to Class Members and Aggrieved Employees; 4) Preliminarily appointing Plaintiff and Class Counsel as representatives of Class Members; 5) Preliminarily approving settlement administration services to be provided by the Settlement Administrator; 6) Preliminarily approving the proposed Enhancement Payment to Plaintiff; 7) Preliminarily approving the application for payment of reasonable attorneys' fees and reimbursement of litigation-related expenses to Class Counsel; and 8) Scheduling a fairness hearing on the question of whether the proposed Agreement should be finally approved as fair, reasonable and adequate as to the Class Members.

9.1.2 Defendant shall not oppose Plaintiff's motion for approval of the proposed Agreement.

9.1.3 The Parties shall cooperate with each other and the Settlement Administrator during the process of giving Class Members notice and opportunity to object to the Agreement, as necessary and appropriate to assure effective communication to individual Class Members of information about their rights and obligations under this Agreement.

9.2 Final Approval and Fairness Hearing: On a date approved by the Court and set forth in the Notice of Settlement, the Court shall hold the Final Approval and Fairness Hearing where objections, if any, may be heard. Class Counsel shall provide the Court as part of the motion for final approval of the Agreement, a declaration by the Settlement Administrator of due diligence and proof of mailing of the Notice of Settlement required to be mailed to Class Members by this Agreement, and of the delivery results of the Settlement Administrator's mailings including tracing and re-mailing efforts. The Settlement Administrator declaration shall identify, by name, any Class Member who submitted a timely and valid request to opt out during the Notice Period.

9.2.1 Class Counsel and Defendant shall work in good faith to draft a mutually agreeable Proposed Order Granting Final Approval of Class Action and PAGA Settlement and Final Judgment. The

Proposed Order Granting Final Approval of Class Action and PAGA Settlement and Final Judgment shall include findings and orders: 1) Approving the Agreement, adjudging the terms thereof to be fair, reasonable and adequate, and directing that its terms and provisions be carried out; 2) Approving the payment of an Enhancement Payment to the Class Representative; 3) Approving Class Counsel's application for an award of attorneys' fees and reimbursement of out-of-pocket litigation expenses; 4) Approving the Settlement Administrator Costs; and 5) Providing that the Court will retain jurisdiction to oversee administration and enforcement of the terms of the Agreement and the Court's orders.

9.2.2 Following entry of the Court's order granting final approval of the Agreement, the Parties will each act to ensure the fulfillment of all its provisions, including but not limited to the following: 1) Should an appeal be taken from the final approval of the Agreement or motion to set aside the judgement be filed, all parties will support the final approval order on appeal or otherwise; 2) Class Counsel will assist the Settlement Administrator as needed or requested in the process of identifying and locating Participating Class Members and Aggrieved Employees entitled to payments under the Agreement and assuring delivery of such payments; 3) Class Counsel and Defendant's Counsel will cooperate with each other and assist the Settlement Administrator as needed or requested in completing the distribution of any residual amounts, as specified above, to the *cy pres* beneficiaries; 4) Class Counsel, in conjunction with the Settlement Administrator, will certify to the Court completion of all payments required to be made by this Agreement.

9.3 Final Judgment: If the Court approves this Agreement at the final approval and fairness hearing, the Parties will request that the Court enter an Order Granting Final Approval of Class Action and PAGA Settlement and Final Judgment.

9.4 Notice to LWDA: Plaintiff will provide notice to the Labor and Workforce Development Agency ("LWDA") of this settlement in accordance with Labor Code § 2699(1)(2).

10. MISCELLANEOUS TERMS

10.1 Defendant's Right to Withdraw Based on Opt-Outs: If, prior to the Final Approval Date, 10% or more of the Class Members have submitted proper and timely requests to opt-out in accordance with the provisions of the Agreement, Defendant may rescind the Agreement and all actions taken in its furtherance will be thereby null and void. Defendant must exercise this right of rescission, in writing, to Class Counsel, within seven (7) calendar days after the Settlement Administrator notifies the Parties of the

total number of opt-outs. If the option to rescind is exercised, then any Settlement Administrator Costs shall be paid by Defendant. Defendant has represented that there are no more than 3,861 workweeks by Class Members during the Class Period and 5,188 workweeks by Aggrieved Employees during the PAGA Claim Period. In the event the combined number of workweeks by Class Members and Aggrieved Employees during the respective periods is more than 9,954 collectively (*i.e.*, greater than 10% more than 9,049), then the Gross Settlement Amount shall be increased proportionally by the workweeks in excess of 9,954, multiplied by the workweek value. For example, if there are actually 10,049 workweeks in the Class Period, and the actual workweek value is \$ \$41.94 per workweek, Defendant would have to increase the Gross Settlement Amount by \$3,984.30 (10,049 workweeks – 9,954 workweeks = 95 workweeks x \$41.94/workweek).

10.2 Circular 230 Disclaimer: EACH PARTY TO THIS AGREEMENT (FOR PURPOSES OF THIS SECTION, THE “ACKNOWLEDGING PARTY” AND EACH PARTY TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN “OTHER PARTY”) ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR SHALL ANY SUCH COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER OR ITS OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY’S OR ADVISER’S TAX

1 STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON
2 DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX
3 STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY
4 THIS AGREEMENT.

5 10.3 No Prior Assignments: The Parties represent, covenant, and warrant that they have not
6 directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to
7 any person or entity any portion of any liability, claim, demand, action, cause of action or right released
8 and discharged in this Agreement.

9 10.4 Waiver of Appeal and Ability to Opt Out: To the extent permitted by applicable law, by
10 signing this Agreement Defendant is waiving any rights to appeal from the Court's approval of the
11 settlement unless the Court materially modifies the settlement. Furthermore, by signing this Agreement
12 Plaintiff is waiving any right or ability to opt out of this Agreement during the Notice Period or otherwise.

13 10.5 Exhibits Incorporated by Reference: The terms of this Agreement include the terms set
14 forth in any attached Exhibits, which are incorporated by this reference as though fully set forth in this
15 Agreement. Any Exhibits to this Agreement are an integral part of the Settlement.

16 10.6 Judgment and Retention of Jurisdiction to Enforce: Upon the Effective Date, judgment will
17 be entered according to this Agreement. The Parties stipulate and agree that the Sacramento County
18 Superior Court shall have continuing jurisdiction to enforce the terms of the Agreement pursuant to Civil
19 Procedure Code section 664.6 and that the prevailing party any action necessary to enforce the terms of the
20 Agreement after default by the other party may recover reasonable attorney's fees and costs related thereto.

21 10.7 Mutual Cooperation: The Parties agree to cooperate fully with one another to accomplish
22 and implement the terms of this Agreement. Such cooperation shall include, but not be limited to, execution
23 of such other documents and the taking of such other action as may reasonably be necessary to fulfill the
24 terms of this Agreement. The Parties to this Agreement shall use their best efforts, including all efforts
25 contemplated by this Agreement and any other efforts that may become necessary by Court order, or
26 otherwise, to effectuate this Agreement and the terms set forth herein.

27 10.8 No Admission of Liability: Neither the acceptance nor the performance by Defendant of
28 the terms of this Agreement, nor any of the related negotiations or proceedings, is or shall be claimed to

1 be, construed as, or deemed to be, an admission by Defendant of the truth of any of the allegations in the
2 Complaint, the representative character of the Action, the validity of any of the claims that were or could
3 have been asserted by Plaintiff and/or Class Members in the Action, or of any liability or guilt of Defendant
4 in the Action. Nothing in this Agreement shall be construed to be or deemed an admission by Defendant
5 of any liability, culpability, negligence, or wrongdoing toward Plaintiff, the Class Members, or any other
6 person, and Defendant specifically disclaim any liability, culpability, negligence, or wrongdoing toward
7 Plaintiff, the Class Members, or any other person. Each of the Parties has entered into this Stipulation with
8 the intention to avoid further disputes and litigation.

9 10.9 Confidentiality: The Parties agree to maintain the confidentiality of this settlement other
10 than as necessary to obtain Court approval and effectuate the terms of the settlement.

11 10.10 Notices: Unless otherwise specifically provided herein, all notices, demands, or other
12 communications given hereunder shall be in writing and shall be deemed to have been duly given as of the
13 third business day after mailing by United States certified mail, return receipt requested, addressed as
14 follows:

15 To Plaintiff and the Class:

16 Galen T. Shimoda
17 Justin P. Rodriguez
18 Brittany V. Berzin
19 Shimoda & Rodriguez Law, PC
20 9401 East Stockton Blvd., Suite 120
21 Elk Grove, CA 95624

22 To Defendant:

23 Carrie Bushman
24 Cook Brown LLP
25 2407 J Street Second Floor
26 Sacramento, California 95816

27 10.11 Mutual Drafting of Agreement: The Parties hereto agree that the terms and conditions of
28 this Agreement are the result of lengthy, intensive, arm's-length negotiations between the Parties and that
this Agreement shall not be construed in favor of or against any party by reason of the extent to which any
party or its counsel participated in the drafting of this Agreement.

1 10.12 Attorneys' Fees and Costs Limitations: Neither Class Counsel nor any other attorneys
2 acting for, or purporting to act for, the Class, Class Members, or Plaintiff, may recover or seek to recover
3 any amounts for fees, costs, or disbursements from the Releasees or the Gross Settlement Amount except
4 as expressly provided in this Agreement.

5 10.13 No Modifications: This Agreement may be amended or modified only by a written
6 instrument signed by counsel for all Parties or their successors-in-interest. This Agreement may not be
7 discharged except by performance in accordance with its terms.

8 10.14 Authorization to Enter Into Settlement Agreement: Counsel for all Parties warrant and
9 represent they are expressly authorized by the Parties whom they represent to negotiate this Agreement and
10 to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement
11 to effectuate its terms and to execute any other documents required to effectuate the terms of this
12 Agreement.

13 10.15 Class Member Signatories: Because the Action has not yet been certified, and the Class
14 Members are so numerous, the Parties agree that it is impossible or impractical to have each Class Member
15 sign this Agreement. It is agreed that, for purposes of seeking approval of the Agreement, this Agreement
16 may be executed on behalf of all Class Members by the Class Representative.

17 10.16 Counterparts: This Agreement shall become effective upon its execution by all of the
18 undersigned. Plaintiff, Class Counsel, Defendant and Defendant's Counsel may execute this Agreement in
19 counterparts, and execution of counterparts shall have the same force and effect as if each had signed the
20 same instrument. Facsimile, electronic, and/or scanned copies of signatures shall have the same force and
21 effect of originals.

22 10.17 Choice of Law: The Agreement and any exhibits hereto shall be considered to have been
23 negotiated, executed, and delivered, and to have been wholly performed, in the State of California, and the
24 rights and obligations of the Parties to the Agreement shall be construed and enforced in accordance with,
25 and governed by, the substantive laws of the State of California without giving effect to that State's choice
26 of law principles.

1 10.18 Headings and Captions: Section titles or captions contained in the Agreement are inserted
2 as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of
3 this Agreement, or any provision thereof.

4 10.19 No Retaliation or Discouragement: The Parties agree they will take no action that could be
5 construed as retaliation against any Class Members for participating or seeking to participate in this class
6 action settlement. The Parties will not discourage any class member from participating or seeking to
7 participate in this class action settlement. This is a material term of the Agreement and non-breaching
8 Parties will seek court intervention if this provision is breached.

9 10.20 Integrated Agreement: This Agreement sets forth the entire understanding between the
10 Parties and supersedes any and all prior agreements, oral or written, pertaining to the subject matter hereof.
11 Each party acknowledges that there is no representation, inducement, promise or agreement which has been
12 made, orally or otherwise, by the other party, concerning the terms or conditions of this Agreement, which
13 is not expressly embodied in this Agreement. In entering into this Agreement, the Parties represent that the
14 terms of this Agreement are fully understood and voluntarily accepted by the Parties.

15 10.21 Binding on Successors and Assigns: This Agreement will be binding upon, and inure to the
16 benefit of, the successors or assigns of the Parties to this Agreement, as previously defined.

17 10.22 Invalidity of Any Provision: Before declaring any provision of this Agreement invalid, the
18 Court will first attempt to construe the provision as valid to the fullest extent possible consistent with
19 applicable precedents so as to define all provisions of this Settlement Agreement valid and enforceable.

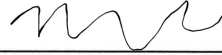
20 10.23 Waiver of Compliance: No waiver of any condition or covenant contained in this
21 Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply
22 or constitute a further waiver by such party of the same or any other condition, covenant, right or remedy.

23 IN WITNESS WHEREOF, this Agreement is executed by the Parties and their duly authorized
24 attorneys, as of the day and year herein set forth.

1 **For Plaintiff:**

2 Date: 3/4/2024

DocuSigned by:



Maurece Martin

1E665F92F7E74CB...

4 **For Defendant:**

5 Date: 3-4-24



By:

For Western Engineering Contractors, Inc.

10 APPROVED AS TO FORM

Shimoda & Rodriguez Law, PC

12 Dated: 3/4/2024

By:



Galen T. Shimoda

Justin P. Rodriguez

Brittany V. Berzin

Attorneys for Plaintiff and Aggrieved
Employees

16 APPROVED AS TO FORM

COOK BROWN LLP

18 Dated: 3.4.24

By:



Carrie Bushman

Attorney for Defendant

Exhibit 1

CALIFORNIA SUPERIOR COURT
FOR THE COUNTY OF SACRAMENTO

MAURECE MARTIN, individually and on
behalf of all other similarly situated employees,

Plaintiff,

vs.

WESTERN ENGINEERING CONTRACTORS,
INC., a California Corporation; and DOES 1 to
100, inclusive,

Defendants.

Case No. 34-2023-00334816

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

ATTENTION: all non-exempt, hourly employees who have, or continue to, work for Western Engineering Contractors, Inc. in California, and who did not sign an arbitration agreement with a class action waiver, from February 15, 2019 up to October 8, 2023 (the “Class Members”) and all non-exempt, hourly employees who have, or continue to, work for Western Engineering Contractors, Inc. in California from February 14, 2022 up to October 8, 2023 (“Aggrieved Employees”).

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

You are receiving this notice pursuant to an order from the Sacramento County Superior Court (“Court”) granting Plaintiff’s motion for preliminary approval of a Joint Stipulation Regarding Class Action and PAGA Settlement and Release (“Agreement” or “Settlement”) as fair, reasonable, and adequate. The Settlement was entered into between Plaintiff Maurece Martin (“Plaintiff” or “Class Representative”), and Defendant Western Engineering Contractors, Inc. (“Defendant”) on behalf of Class Members and Aggrieved Employees as defined above. The terms of the Settlement are outlined herein. You are receiving this notice because Defendant’s records indicate you fall within the definition of “Class Member” and/or Aggrieved Employee. Defendant’s records also indicate that you worked [redacted] weeks during the applicable Class Period and/or PAGA period (as defined below), which means your total share of the settlement proceeds is estimated to be [redacted]. Your actual share of the settlement proceeds may 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

On February 15, 2023, Plaintiff filed a Complaint against Defendant in the Sacramento County Superior Court of California on behalf of himself and Class Members. The term “Action” means this putative class action pending in Sacramento County Superior Court, Case No. 34-2023-00334816. The Class Period is from February 15, 2019 up to October 8, 2023 (the “Class Period”). On February 14, 2023, Plaintiff filed a Private Attorneys General Act (“PAGA”) notice with the Labor Workforce Development Agency and, on May 25, 2023, Plaintiff filed a First Amended Complaint adding a cause of action under the Private Attorneys General Act on behalf of himself and Aggrieved Employees. The PAGA Claim Period is from February 14, 2022 up to October 8, 2023 (the “PAGA Claim Period”). Plaintiff filed an amended PAGA notice on December 5, 2023 and filed a Second Amended Complaint on [redacted date].

In the Action, Plaintiff sought to obtain unpaid wages, interest, unpaid expenses, statutory penalties, civil penalties, fees, and costs on behalf of himself, Class Members, and Aggrieved Employees by alleging claims for failure to pay overtime wages, failure to pay minimum wages, meal period violations, rest period violations, wage statement violations, waiting time penalties, failure to provide paid sick leave, unfair competition, violations of the Private Attorneys General Act, failure to reimburse business expenses, and failure

to pay accrued vacation. Plaintiff alleged that Defendant violated California law by 1) failing to accurately record and maintain employees' hours worked; 2) failing to pay for all hours worked, including travel time; 3) failing to authorize and permit putative class members to take all meal and rest periods or to pay premiums in lieu thereof; 4) failing to include the inclusive dates of the pay period and employees' last 4 digits of their social security number or employee identification number on wage statements issued to putative class members; 5) failing to incorporate the value of prevailing wage rates into employees' paid sick leave and regular rates of pay for the purpose of calculating overtime wages on non-prevailing wage jobs; 6) failing to reimburse the use of personal cell phones and vehicles; and 7) failing to pay accrued and unused vacation pay at all or at an employee's final regular rate of pay at the time of separation. 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 settlement. By settling, the Parties will avoid the risks associated with a lengthy litigation process. Despite agreeing to and supporting the Agreement, Defendant continues to deny all allegations and claims. Defendant does not admit any liability to Plaintiff or to any other current or former employees, and Defendant does not admit that any violations of Plaintiff's rights, or the rights of any other current or former employees has occurred. The Court has not made any determination as to whether the claims advanced by Plaintiff have any merit.

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 Agreement applies to any and all Class Members, which are defined as all non-exempt employees who have, or continue to, work for Defendant in California, and who did not sign an arbitration agreement with a class action waiver, from February 15, 2019 up to October 8, 2023. The Agreement also applies to Aggrieved Employees, which are defined as all non-exempt, hourly employees who have, or continue to, work for Defendant in California from February 14, 2022 up to October 8, 2023. 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 Class Members of how they can either participate in the Settlement or be excluded from the Settlement. As set forth below, Aggrieved Employees cannot opt out of this Agreement as it relates to the PAGA Payment or Released PAGA Claims regardless of whether they opt out of being a Class Member. Aggrieved Employees will receive their share of the PAGA Payment regardless of whether they opt out of being a Class Member.

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 and Seventeen Thousand Five Hundred (\$417,500) ("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, attorneys' costs not to exceed \$10,000, Settlement Administrator Costs estimated not to exceed \$10,000, Class Representative's Enhancement Payment of \$10,000, and \$41,750 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 \$41,750 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 based on the number of workweeks worked during the PAGA Claim Period.

The number of weeks you worked during the Class Period and your estimated total share of the Net Settlement Amount and PAGA Payment ("Individual Settlement 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 (*i.e.*, those who do not opt out of the Settlement), 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. Individual Settlement Amounts and Allocation Between Class Members and Aggrieved Employees

Defendant will pay Individual Settlement Amounts through the Settlement Administrator, as described below, to each Participating Class Member and to Aggrieved Employees. All Individual Settlement Amounts will be subject to appropriate taxation. The Parties have agreed, based on the allegations in the Action, that all Individual Settlement 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 Participating Class Members and Aggrieved Employees will not require the submission of a claim form. Each Participating Class Member's share will be determined by dividing their total weeks worked within the Class Period by the total weeks worked by all Participating 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. The PAGA Claim Period is defined as from February 14, 2022 up to October 8, 2023. Defendant's records indicate that you worked [REDACTED] weeks during the applicable PAGA Claim Period, which means your share of the PAGA Payment is estimated to be [REDACTED]. This amount is included in your estimated Individual Settlement Amount stated on the first page of this notice, not in addition to it. You will still receive your share of the PAGA Payment even if you opt out of being a Class Member or do not meet the definition of Class Member. Receipt of the Individual Settlement 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 Settlement Administrator from Defendant's records. Defendant's records will be presumed correct unless evidence to the contrary is provided to the Settlement Administrator. Defendant's records and any additional evidence will be reviewed by the Settlement Administrator in the event of a dispute about the number of workweeks worked by an individual Class Member or Aggrieved Employee. If a Class Member / Aggrieved Employee disputes the accuracy of Defendant's records, all supporting documents evidencing additional workweeks must be submitted by the Class Member or Aggrieved Employee. 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 [REDACTED]. The dispute will be resolved by the Settlement Administrator based on the records and evidence provided.

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 that are alleged in the operative Complaint, and any additional wage and hour claims that could have been brought based on the facts alleged in the operative Complaint, through the Class Period. This release includes but is not limited to claims for (1) failure to pay overtime wages (CA Labor Code §§ 510, 558, 558.1, 1194, 1815 and Wage Order 16, § 3); (2) failure to pay minimum wages (CA Labor Code § 1194, 1194.2, 1197.1 and Wage Order 16 § 4); (3) meal period violations (CA Labor Code §§ 226.7, 512 and Wage Order 16 § 11(A), (B)); (4) rest period violations (CA Labor Code § 226.7 and Wage Order 16 § 12(A)); (5) wage statement penalties (CA Labor Code §§ 226, 226.3, 1174, 1815, 1198 and Wage Order 16, § 6(A)); (6) waiting time penalties (CA Labor Code §§ 201-203, 256); (7) Failure to Provide Paid Sick Leave (CA Labor Code §§ 246, 246.5, 248.5); (8) unfair competition (CA Business & Professions Code § 17200, et seq.); (9) Private Attorneys General Act, (10) Failure to Reimburse for Business Expenses (CA Labor Code § 2802); and (11) Failure to Pay Accrued Vacation (CA Labor Code § 227.3). This release excludes the release of claims not permitted by law. This release will cover all Class Members who do not opt out.

Aggrieved Employees will be deemed to have released any and all claims for civil penalties that were brought under the Private Attorneys General Act, Labor Code §§ 2698 *et seq.*, contained in Plaintiff's operative Complaint, Plaintiff's PAGA letters to the Labor Workforce Development Agency and any additional wage and hour PAGA claims that could have been brought based on the facts alleged in the operative Complaint and PAGA letters during the PAGA Claim Period. This release includes but is not limited to claims for (1) Failure to Pay Overtime Wages (CA Labor Code §§ 510, 1194, 1815; IWC Wage Order 16, § 3); (2) Failure to Pay Minimum Wages (CA Labor Code §§ 1194, 1197.1, IWC Wage Order 16, § 4); (3) Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof (CA Labor Code §§ 226.7, 512 and Wage Order 16, § 11(A), (B)); (4) Failure to Provide Rest Breaks or Pay Premiums in Lieu Thereof (CA Labor Code § 226.7 and IWC Wage Order 16, § 12(A)); (5) Failure to Provide Accurate Wage Statements (CA Labor Code §§ 226, 226.3); (6) Failure to Pay Final Wages (CA Labor Code §§ 201-203, 256); (7) Violation of Provisions Regulating Hours and Days of Work in any Industrial Welfare Commission Order (CA Labor Code §§ 558, 558.1, 1193.6, 2802); (8) Failure to Maintain Accurate Records (CA Labor Code §§ 226.3, 1174, 1815, 1198 and IWC Wage Order 16, § 6(A)); (9) Failure to Provide Paid Sick

Leave (CA Labor Code §§ 246, 246.5, 248.5); (10) Failure to Reimburse for Business Expenses (CA Labor Code § 2802); and (11) Failure to Pay Accrued Vacation (CA Labor Code § 227.3). Aggrieved Employees cannot opt out of this waiver of claims.

The individuals released (“Released Parties”) include Defendant, as well as Defendant’s current and former officers, shareholders, directors, agents, employees, attorneys, and insurers, including but not limited to Don J. Carroll, Theresa W. Carroll, Lyndsey C. Gregory and Josh Wertz

Class Members and/or Aggrieved Employees can talk to the Court-approved Settlement Administrator, Apex Class Action, if they have any questions..

III. WHAT ARE YOUR RIGHTS AS A CLASS MEMBER

A. Participating in the Settlement as a Class Member

If you wish to be a Participating Class Member 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 as a Class Member

The Court will exclude you from the being a Class Member if you request this by [REDACTED]. If you do not wish to be bound by the Settlement as a Class Member, you may request to be excluded (*i.e.*, “opt out”) by submitting a timely written request to the Settlement 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 want to be excluded from this Settlement; (c) identify the case name and number (*i.e.* *Martin v. Western Engineering Contractors, Inc.*, 34-2023-00334816); (d) be signed; and (e) be post-marked no later than [REDACTED]. The request to opt out must be mailed by First Class U.S. Mail, or the equivalent, to:

[admin info]

If you submit a request to opt out which is not postmarked by [REDACTED], your request to opt out will be rejected, and you will be bound by the release and all other terms of the Agreement. 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 Settlement Administrator, no longer be a Class Member and not received their share of the Net Settlement Amount. 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 Settlement. However, if the Court rejects your objection, you will still be bound by the terms of the Settlement. 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. 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 supporting documentation; (d) identify the case name and number (*i.e.* *Martin v. Western Engineering Contractors, Inc.*, 34-2023-00334816) (e) be signed; and (f) be post-marked no later than [REDACTED]. The objection must be sent to the Settlement 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.

You may also appear at the final approval hearing to state your objection. Any Class Member who does not request exclusion may, if the Class Member so desires, enter an appearance through an attorney. If you appear through your own attorney, you are responsible for paying that attorney. You should also file a notice of intent to appear with the Court and serve the notice on counsel for Plaintiff and Defendant.

IV. EFFECT OF THE SETTLEMENT: RELEASED RIGHTS AND CLAIMS

If the Court grants final approval of the Settlement, the Court will make and enter judgment consistent therewith. The judgment, whether favorable or not, will bind all Class Members who do not request exclusion. After final approval, each and every Class Member who does not opt out of the Settlement and each and every Aggrieved Employee, will release Defendant and the Released Parties from the Released Class Claims and the Released PAGA 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 these releases 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 27, 720 9th Street Sacramento, California 95814, on [redacted] at [redacted] to determine whether the Agreement should be finally approved as fair, reasonable and adequate. To join by Zoom link: <https://saccourt-ca.gov.zoomgov.com/my/ssdept27>. To join by phone: (833) 568-8864 / ID: 16120204632. The Court also will be asked to approve Class Counsel's request for attorneys' fees and costs, the Settlement Administrator Costs, and the Class Representative's Enhancement Payment. The hearing may be continued without further notice. It is not necessary for you to appear at this hearing.

VI. SETTLEMENT CHECKS

Settlement checks will be null and void 180 days after issuance if not deposited or cashed. Any check not negotiated within 180 days of issuance shall be distributed to Sacramento Food Bank and Family Services. If your check is lost or misplaced, you should contact the Settlement Administrator immediately to request a replacement.

VII. ADDITIONAL INFORMATION

You may access the Complaint, Class Counsel's motion for preliminary approval, the Agreement, and any other documents required by the Court at the Settlement Administrator's website: [admin web address]. If final approval is granted, a notice of entry of order and copy of the order will be available on the Court's Public Case Access website: <https://services.saccourt.ca.gov/PublicCaseAccess/>. You can also contact Class Counsel or Defendant's Counsel as follows:

Galen T. Shimoda
Justin P. Rodriguez
Brittany V. Berzin
Shimoda & Rodriguez Law, PC
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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 [number]

BY ORDER OF THE COURT

EXHIBIT B

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Justin P. Rodriguez (Cal. State Bar No. 278275)
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Attorneys for Plaintiff MAURECE MARTIN

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

MAURECE MARTIN, individually and on
behalf of all other similarly situated
employees,

Plaintiff,

vs.

WESTERN ENGINEERING
CONTRACTORS, INC., a California
Corporation; and DOES 1 to 100, inclusive,

Defendants.

Case No. 34-2023-00334816

CLASS ACTION

**SECOND AMENDED COMPLAINT FOR
DAMAGES:**

- 1. Failure to Pay Overtime Wages**
- 2. Failure to Pay Minimum Wages**
- 3. Meal Period Violations**
- 4. Rest Period Violations**
- 5. Wage Statement Violations**
- 6. Waiting Time Penalties**
- 7. Unfair Competition**
- 8. Private Attorneys General Act**
- 9. Failure to Reimburse Expenses**
- 10. Failure to Pay Accrued Vacation**

DEMAND FOR JURY TRIAL

1 Plaintiff MAURECE MARTIN (“Plaintiff”), on behalf of himself and all other similarly
2 situated employees, hereby files this Complaint against WESTERN ENGINEERING
3 CONTRACTORS, INC., a California Corporation; and DOES 1 to 100, inclusive (hereinafter all
4 collectively referred to as “Defendants”). On information and belief, Plaintiff alleges the following:

5 **INTRODUCTION**

6 1. This is a class action and representative Private Attorneys General Act (“PAGA”) lawsuit
7 brought by Plaintiff for failure to pay overtime wages, failure to pay minimum wages, meal and rest
8 period violations, wage statement violations, waiting time penalties, failure to maintain accurate records,
9 failure to pay sick leave, failure to reimburse expenses, failure to pay accrued vacation at termination,
10 and unfair competition.

11 **JURISDICTION AND VENUE**

12 2. The Sacramento County Superior Court has jurisdiction in this matter pursuant to
13 California Code of Civil Procedure section 410.10 to determine alleged violations of the California
14 Labor Code, California Business and Professions Code, and Wage Order No. 16.

15 3. Venue is proper pursuant to Civil Procedure Code §§ 395(a) and 395.5 in that some of
16 the wrongful acts and violations of law asserted herein occurred within Sacramento County, and
17 Defendant’s obligation to pay wages arose in Sacramento County pursuant to *Madera Police Officers*
18 *Assn. v. City of Madera*, 36 Cal.3d 403, 414 (1984).

19 4. Plaintiff sought permission pursuant to Labor Code section 2699 *et seq.* to pursue the
20 claims set forth in this Complaint against Defendants as a Private Attorney General on behalf of himself
21 and other similarly situated employees. Pursuant to Labor Code section 2699.3, Plaintiff gave written
22 notice via online submission to the Labor and Workforce Development Agency (“LWDA”) on
23 approximately February 14, 2023 and December 6, 2023. Plaintiff provided facts and legal bases for his
24 claims within the notice to the LWDA on all violations asserted under the Private Attorneys General Act
25 cause of action. Plaintiff submitted the \$75.00 filing fee. The notices were also sent via certified mail to
26 Defendants. Plaintiff is informed and believes, that to date, the LWDA has not provided any response to
27 Plaintiff’s notice correspondences. Accordingly, Plaintiff is informed and believes that he has exhausted
28 all administrative remedied pursuant to the Private Attorneys General Act and may bring this action on

1 behalf of himself and all Aggrieved Employees. *See* Cal. Labor Code § 2699.3(a)(2)(A), (c)(3); *Caliber*
2 *Bodyworks, Inc. v. Sup. Ct.*, 134 Cal.App.4th 365, 383 n.18, 385 n.19 (2005). Aggrieved Employees
3 includes all non-exempt, hourly employees who have, or continue to, work for Defendants in California
4 from February 14, 2022 to the present.

5 PARTIES

6 5. MAURECE MARTIN is an individual over the age of eighteen (18) and is a resident
7 of the State of California.

8 6. On information and belief, Plaintiff alleges, WESTERN ENGINEERING
9 CONTRACTORS, INC., is now and/or at all times mentioned in this Complaint was a California
10 Corporation and the owner and operator of an industry, business and/or facility doing business in the
11 State of California.

12 7. Defendants DOES 1 through 100 are affiliates, subsidiaries and related entities and the
13 alter egos of each of the other Defendants named herein, corporate or otherwise, who participated in and
14 are liable for the actions herein alleged. Plaintiff will seek to amend this Complaint to allege the true
15 names and capacities of these DOE Defendants when they are ascertained.

16 8. At all times mentioned herein, each Defendant was the agent or employee of each of the
17 other Defendants and was acting within the course and scope of such agency or employment. The
18 Defendants are jointly and severally liable to Plaintiff.

19 9. Defendants, and each of them, are now and/or at all times mentioned in this Complaint
20 were members of and/or engaged in a joint employment, joint venture, partnership and common
21 enterprise, and were acting within the course and scope of, and in pursuance of said joint employment,
22 joint venture, partnership and common enterprise.

23 10. Defendants, and each of them, now and/or at all times mentioned in this Complaint
24 approved, ratified, acquiesced, aided or abetted the acts and omissions alleged in this Complaint.

25 11. Defendants proximately caused Plaintiff to be subjected to the unlawful practices,
26 wrongs, complaints, injuries and/or damages alleged in this Complaint.

27 //

28 //

CLASS ALLEGATIONS

12. Plaintiff brings the First through Seventh and Ninth through Tenth Causes of Action on behalf of himself, and all others similarly situated as a class action pursuant to California Code of Civil Procedure section 382. The class which Plaintiff seeks to represent is composed of, and defined, as follows:

All non-exempt employees who have, or continue to, work for Defendants in California from February 15, 2019 to the present.

13. This action has been brought and may be properly maintained as a class action, pursuant to the provision of California Code of Civil Procedure section 382, because there is a well-defined community of interests in the litigation and the proposed class is easily ascertainable.

(a) Numerosity: The putative class is so numerous that the individual joinder of all members is impracticable under the circumstances of this case. While the exact number of class members is unknown to Plaintiff at this time, Plaintiff is informed and believes that Defendants have employed as many as fifty (50) individuals falling within the above stated class definition throughout the State of California during the applicable statute of limitations, who were subjected to the policies and practices outlined in this Complaint. As such, joinder of all members of the putative class is not practicable.

(b) Common Questions Predominate: Common questions of law and fact exist as to all members of the putative class and predominate over questions that affect only individual members of the class. These common questions of law and fact include, without limitation, the following:

- (1) Whether Defendants had policies and practices resulting in unpaid minimum wages;
- (2) Whether Defendants had policies and practices resulting in unpaid overtime wages;
- (3) Whether Defendants accurately tracked class members' hours worked;
- (4) Whether Defendants paid class members all minimum wages;
- (5) Whether Defendants paid class members all overtime wages;

- 1 (6) Whether Defendants failed to correctly calculate class members regular rates of
2 pay;
- 3 (7) Whether Defendants failed to authorize and permit meal periods;
- 4 (8) Whether Defendants failed to authorize and permit rest periods;
- 5 (9) Whether Defendants required class members to take on duty meal periods;
- 6 (10) Whether Defendants' on duty meal period policy was lawful;
- 7 (11) Whether as a result of Defendants' policies and practices class members received
8 all wages, due and owing, at the time of their termination or separation;
- 9 (12) Whether Defendants provided class members with wage statements that complied
10 with Labor Code section 226;
- 11 (13) Whether Defendants paid class members all vacation wages; and
- 12 (14) Whether Defendants reimbursed class members for all business expenses.
- 13 (c) Typicality: Plaintiff's claims are typical of the claims of the members of the putative
14 class. The putative class also sustained damages arising out of Defendants' common
15 course of conduct in violation of the law as complained of herein. Plaintiff and all
16 members of the putative class were non-exempt, hourly employees who were not paid for
17 all hours worked, did not receive all meal and rest periods, were not paid the correct
18 regular rates of pay, did not timely receive all final wages owed to them, and did not
19 receive wage statements with accurate information, the inclusive dates of the pay period
20 or class members' employee ID or the last four of their social resulting in failure to pay
21 overtime wages, failure to pay minimum wages, meal and rest period violations, wage
22 statement violations, waiting time penalties, failure to pay prevailing wages, and unfair
23 competition. As a result, Plaintiff and each member of the putative class will have
24 suffered the same type of harm and seek the same type of recovery based on the same
25 legal theories.
- 26 (d) Adequacy: Plaintiff will fairly and adequately protect the interests of the members of the
27 putative class. For all relevant times, Plaintiff resided in California and worked for
28 Defendants in California. Moreover, Plaintiff is an adequate representative of the

1 putative class as Plaintiff has no interests that are adverse to those of putative class
2 members. Additionally, Plaintiff has retained counsel who has substantial experience in
3 complex civil litigation and wage and hour matters.

- 4 (e) Superiority: A class action is superior to other available means for the fair and efficient
5 adjudication of the controversy since individual joinder of all members of the putative
6 class is impracticable. Class action treatment will permit a larger number of similarly
7 situated persons to prosecute their common claims in a single forum simultaneously,
8 efficiently, and without the unnecessary duplication of effort and expense that numerous
9 individual actions would engender. Further, as damages suffered by each individual
10 member of the class may be relatively small, the expenses and burden of the individual
11 litigation would make it difficult or impossible for individual members of the class to
12 redress the wrongs done to them, and an important public interest will be served by
13 addressing the matter as a class action. The cost to the court system of adjudication of
14 such individualized litigation would be substantial. Individualized litigation would also
15 present the potential for inconsistent or contradictory judgments.

16 14. Plaintiff is unaware of any difficulties that are likely to be encountered in the
17 management of this action that would preclude its maintenance as a class action.

18 GENERAL ALLEGATIONS

19 15. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 14 as though fully
20 set forth herein.

21 16. Plaintiff Maurece Martin worked for Defendants from approximately April 1, 2021 to
22 April 16, 2021, February 11, 2022 to March 1, 2022, and March 4, 2022 to to May 16, 2022 as an
23 hourly, non-exempt employee. Similarly situated employees also worked for Defendants during the
24 claim period as hourly, non-exempt employees.

25 17. Defendants failed to accurately record Plaintiff's and similarly situated employees' hours
26 worked. Defendants did not accurately record employees' precise start and end times or the precise start
27 and end times of meal periods, to the extent any were taken. In addition, Defendants shaved time off of
28 Plaintiff's and similarly situated employees' hours worked. Defendants also deducted time for meal

1 periods Plaintiff and similarly situated employees did not receive. These practices resulted in unpaid
2 minimum and overtime wages.

3 18. Plaintiff and Aggrieved Employees worked on prevailing wage jobs and non-prevailing
4 wage jobs. Plaintiff and Aggrieved Employees also performed worked over eight (8) hours in a day
5 and/or forty (40) hours in a week, earning overtime. When employees worked on prevailing wage and
6 non-prevailing wage jobs within the same workday and/or workweek, Defendants did not correctly
7 incorporate the value of the prevailing wage rates into Plaintiff's and Aggrieved Employees' regular
8 rates of pay for the purpose of calculating overtime wages and paid sick time for non-prevailing wage
9 overtime hours and/or the prevailing wage rate in effect for overtime on prevailing wage projects.

10 19. Defendants did not authorize and permit Plaintiff and Aggrieved Employees to take all
11 meal and rest periods owed to them. Defendants employed Plaintiff and Aggrieved Employees for work
12 for periods of more than five hours without providing them an off-duty meal period of at least 30
13 minutes. Defendants did not have a policy or practice to provide off-duty meal periods before the end of
14 the fifth hour of work. Defendants employed Plaintiff and Aggrieved Employees for periods of more
15 than 3.5 hours without providing them 10 minute rest periods. Defendants did not pay Plaintiff and
16 Aggrieved Employees all missed meal and rest period premiums they were owed.

17 20. Defendants required Plaintiff and similarly situated employees to travel to various job
18 sites throughout their employment using their personal vehicles. At times the locations required
19 Plaintiff and similarly situated employees to drive more than one (1) hour to or from work. Defendants
20 did not compensate Plaintiff and similarly situated employees for this travel time or pay them
21 reimbursement for mileage. Defendants also required Plaintiff and similarly situated employees to use
22 their personal cellphones to communicate for work without paying them any reimbursement.

23 21. At the time of Plaintiff's and similarly situated employees' separation from employment
24 they have accrued but unused vacation owing to them that Defendants failed to pay.

25 22. Due to the practices and policies outline above, Defendants did not provide Plaintiff and
26 similarly situated employees with accurate wage statements. For example, the wage statements did not
27 include accurate gross and net wages earned, total hours worked by the employee, the inclusive dates of
28 the period for which the employee is paid, the last four digits of the employee's social security number

1 or an employee identification number, and all applicable hourly rates in effect during the pay period and
2 the corresponding number of hours worked at each hourly rate by the employee, including but not
3 limited to rates and corresponding hours for prevailing wages, minimum and overtime wages, paid sick
4 time, and meal and rest period premiums.

5 23. At the time of Plaintiff's and similarly situated employees' termination or separation they
6 had wages owed to them, including minimum wages, overtime wages, prevailing wages, used but not
7 fully paid sick leave wages, and meal and rest period premiums. To date, these wages remain unpaid.

8 **CAUSES OF ACTION**

9 **FIRST CAUSE OF ACTION** 10 **FAILURE TO PAY OVERTIME WAGES** 11 **(As to all Defendants)**

12 24. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 23 as though fully
13 set forth herein.

14 25. During the period Plaintiff was employed by Defendants, Defendants were required to
15 compensate employees at one and one-half (1½) times the regular rate of pay for hours worked in excess
16 of eight (8) hours per day and/or forty (40) hours per week, and two (2) times the regular rate of pay for
17 hours worked in excess of twelve (12) hours per day. *See, e.g.,* IWC Wage Order No. 16, section
18 (3)(A); Cal. Lab. Code §§ 510, 1194. Defendants were also required to compensate employees on
19 public works jobs one and one-half (1½) times the basic rate of pay for hours worked in excess of eight
(8) hours per day and/or forty (40) hours per week. *See* Cal. Labor Code § 1815.

20 26. Plaintiff and similarly situated employees worked in excess of eight (8) hours per day
21 and/or forty (40) hours per week on several occasions while employed by Defendants. However,
22 Defendants failed to compensate Plaintiff and similarly situated employees for all overtime hours
23 worked at the correct rate of pay.

24 27. Plaintiff and similarly situated employees were not exempt from overtime protections
25 employees under the California Wage Orders and Labor Code.

26 28. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees
27 have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to
28 the extent pertinent as if set forth here in full.

SECOND CAUSE OF ACTION
FAILURE TO PAY MINIMUM WAGES
(As to all Defendants)

29. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 28 as though fully set forth herein.

30. For the period preceding the filing of this Complaint, Defendants were required to compensate Plaintiff and similarly situated employees with at least California's applicable minimum for every hour worked. *See* MW-Order 2019; IWC Wage Order, No. 16, section 4(A); Cal. Lab. Code § 1194.

31. Plaintiff was not exempt to the State's Minimum Wage Order. Defendants were aware of their obligation to pay the minimum wage for each hour worked but failed to do so.

32. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

THIRD CAUSE OF ACTION
MEAL PERIOD VIOLATIONS
(As to all Defendants)

33. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 32 as though fully set forth herein.

34. An employer must provide an employee a meal period in accordance with the applicable Wage Order, and California Labor Code sections 226.7 and 512.

35. California Labor Code sections 226.7 and 512 and IWC Wage Order No. 16, section 11(A) require an employer to provide an uninterrupted meal period of not less than thirty (30) minutes for each work period of more than five (5) hours.

36. California Labor Code section 512 and Wage Order No. 16 section 11(B) further provide that employers may not employ employees for a work period for more than ten (10) hours per day without providing the employee with a second meal period of at least thirty (30) minutes. However, if the total hours worked is no more than twelve (12) hours, the second meal period may be waived so long as there was no waiver as to the first meal period. Employees are entitled to one (1) hour of pay at their regular rate of compensation for each meal period not provided.

45. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

FIFTH CAUSE OF ACTION
WAGE STATEMENT VIOLATIONS
(As to all Defendants)

46. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 45 as though fully set forth herein.

47. Pursuant to California Labor Code section 226(a), an employer must provide an itemized statement to an employee, semimonthly or at the time of each payment of wages, showing:

(1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (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 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, and (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. The deductions made from payment of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California.

48. Plaintiff alleges that Defendants intentionally and knowingly failed to provide an itemized statement or failed to provide an accurate and complete itemized statement showing the requirements set forth in California Labor Code section 226(a). Specifically, Defendants did not accurately itemize accurate gross and net wages earned, total hours worked by the employee, the inclusive dates of the period for which the employee is paid, the last four digits of the employee's social security number or an employee identification number, and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the

1 employee, including but not limited to rates and corresponding hours for prevailing wages, minimum
2 and overtime wages, paid sick time, and meal and rest period premiums. Plaintiff and similarly
3 situated employees were not able to promptly and easily determine their total hours worked from
4 their paystubs alone. Additionally, Plaintiff and similarly situated employees suffered confusion
5 over whether they received all wages owed and were prevented from effectively challenging
6 information on their wage statements.

7 49. As a proximate result of Defendants' conduct, Plaintiff and similarly situated
8 employees have been damaged as stated in the section below entitled "DAMAGES," which is
9 incorporated here to the extent pertinent as if set forth here in full.

10 **SIXTH CAUSE OF ACTION**
11 **WAITING TIME PENALTIES**
(As to all Defendants)

12 50. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 49 as though fully
13 set forth herein.

14 51. An employer must pay an employee who is terminated all unpaid wages immediately
15 upon termination. *See* Cal. Lab. Code § 201.

16 52. An employer must pay an employee who resigns all unpaid wages within seventy-two
17 (72) hours of their resignation. *See* Cal. Lab. Code § 202.

18 53. Plaintiff and similarly situated employees did not receive all wages, including minimum
19 wages, overtime wages, prevailing wages, used but not fully paid sick leave, and meal and rest period
20 premiums at their termination or within the required time after their separation from employment.

21 54. An employer who willfully fails to pay an employee wages in accordance with California
22 Labor Code sections 201 and/or 202 must pay the employee a waiting time penalty of up to thirty (30)
23 days. *See* Cal. Lab. Code § 203.

24 55. Defendants knew of their obligation to pay Plaintiff's and similarly situated employees'
25 their final wages when their employment terminated. Indeed, Defendants had knowledge that it failed to
26 accurately track putative class members' hours worked resulting in unpaid wages, failed to provide
27 legally compliant meal and rest periods, failed to pay the correct prevailing wage rates, and failed to pay
28

1 the correct regular rates of pay. Such conduct shows Defendants had knowledge of earned, but unpaid
2 wages at the time of separation, yet Defendants still refused to pay the remaining wages owed.

3 56. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees
4 have been damaged and deprived of their wages and thereby seek their daily rate of pay multiplied by
5 thirty (30) days for Defendants' failure to pay all wages due.

6 **SEVENTH CAUSE OF ACTION**
7 **UNFAIR COMPETITION**

8 **(As to WESTERN ENGINEERING CONTRACTORS, INC. and DOES 1 to 100)**

9 57. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 56 as though fully
10 set forth herein.

11 58. Unfair competition shall mean and include any unlawful, unfair or fraudulent business act
12 or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by Chapter 1
13 (commencing with Section 17500) of Part 3 of Division 7 of the Business and Professions Code. *See*
14 California Business and Professions ("B&P") Code § 17200.

15 59. Plaintiff and similarly situated employees were not paid all wages owed, including
16 minimum and overtime wages, prevailing wages, and paid sick time during their employment or any time
17 thereafter. Moreover, through Defendants conduct Plaintiff and similarly situated employees were
18 denied statutory protections regarding meal and rest periods.

19 60. Plaintiff further alleges that such actions and/or conduct constitute a violation of the
20 California Unfair Competition Law ("UCL") (Business and Professions Code 17200 *et seq.*) pursuant to
21 *Cortez v. Purolator Air Filtration Products Co.*, 23 Cal. 4th 163 (2000).

22 61. As a direct and legal result of the Defendants' conduct, as alleged herein, pursuant to the
23 UCL (including B&P Code §17203), Plaintiff and similarly situated employees are entitled to
24 restitution, including, but not limited to, interest and penalties pursuant to Business & Professions Code
25 sections 17203, 17208, violations of California Labor Code sections 226.7, 510, 512, and 1194 all in an
26 amount as yet unascertained but subject to proof at trial, for four (4) years from the filing of this Action.

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EIGHTH CAUSE OF ACTION
PRIVATE ATTORNEYS GENERAL ACT
(As to all Defendants)

62. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 61 as though fully set forth herein.

63. Plaintiff has alleged to the Labor Commissioner that Defendants have violated the following provisions of the Labor Code in their dealings with him and other similarly situated current and former employees:

- Violation of Labor Code §§ 510, 1194, 1815; IWC Wage Order 16, § 3 (Failure to Pay Overtime Wages)
- Violation of Labor Code §§ 1194, 1197.1; IWC Wage Order 16, § 4 (Failure to Pay Minimum Wages)
- Violation of Labor Code §§ 226, 226.3 (Failure to Provide Accurate Wage Statements)
- Violation of Labor Code §§ 201-203, 256 (Failure to Pay Final Wages)
- Violation of Labor Code §§ 558, 558.1 (Provisions Regulating Hours and Days of Work in Any Industrial Welfare Commission Order)
- Violation of Labor Code §§ 226.7, 512; IWC Wage Order 16, §§ 11(A) and 11(B) (Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof)
- Violation of Labor Code § 226.7; IWC Wage Order 16, § 12(A) (Failure to Provide Rest Periods or Pay Premiums in Lieu Thereof)
- Violation of Labor Code § 226.3, 1174, 1815, 1198; IWC Wage Order 16 § 6(A) (Failure to Maintain Accurate Records)
- Violation of Labor Code § 246, 246.5, 248.5 (Failure to Provide Paid Sick Leave)
- Violation of Labor Code § 2802 (Failure to Reimburse Expenses)
- Violation of Labor Code § 227.3 (Failure to Pay Accrued Vacation)

64. Plaintiff seeks civil penalties against Defendants as provided in the Labor Code, or, if no civil penalty is provided, default penalties pursuant to Labor Code section 2699(f)(2).

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1 65. Plaintiff seeks these civil penalties from Defendants pursuant to Labor Code sections
2 2699(a) and 2699.3.

3 **NINTH CAUSE OF ACTION**
4 **FAILURE TO REIMBURSE EXPENSES**
5 **(As to all Defendants)**

6 66. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 65 as though fully
7 set forth herein.

8 67. California Labor Code section 2802(a) states that “An employer shall indemnify his or
9 her employee for all necessary expenditures or losses incurred by the employee in direct consequence of
10 the discharge of his or her duties, or of his or her obedience to the directions of the employer, even
11 though unlawful, unless the employee, at the time of obeying the directions, believed them to be
12 unlawful.”

13 68. Defendants required Plaintiff and similarly situated employees to use their personal
14 cellphones and personal vehicles but failed to reimburse them for such use.

15 69. As a proximate result of Defendants’ conduct, Plaintiff and similarly situated employees
16 have been damaged as stated in the section below entitled “DAMAGES,” which is incorporated here to
17 the extent pertinent as if set forth here in full.

18 **TENTH CAUSE OF ACTION**
19 **FAILURE TO PAY ACCRUED VACATION**
20 **(As to all Defendants)**

21 70. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 69 as though fully
22 set forth herein.

23 71. California Labor Code section 227.3 states “[u]nless otherwise provided by a collective-
24 bargaining agreement, whenever a contract of employment or employer policy provides for paid
25 vacations, and an employee is terminated without having taken off his vested vacation time, all vested
26 vacation shall be paid to him as wages at his final rate in accordance with such contract of employment
27 or employer policy respecting eligibility or time served; provided, however, that an employment
28 contract or employer policy shall not provide for forfeiture of vested vacation time upon termination.
The Labor Commissioner or a designated representative, in the resolution of any dispute with regard to
vested vacation time, shall apply the principles of equity and fairness.”

72. Defendants provided Plaintiff and similarly situated employees with accrued vacation but then failed to pay all of their accrued vacation to them and/or failed to pay accrued vacation at their final rate of pay at the time of their separation from employment.

73. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

DAMAGES

WHEREFORE Plaintiff requests relief as follows:

1. A jury trial;
2. As to the First Cause of Action:
 - a. Wages in an amount to be proven at trial;
 - b. Interest for the wages due pursuant to California Labor Code section 1194;
 - c. For reasonable attorney's fees and costs incurred pursuant to California Labor Code section 1194;
3. As to the Second Cause of Action:
 - a. Wages in an amount to be proven at trial;
 - b. Interest for the wages due pursuant to California Labor Code section 1194;
 - c. For reasonable attorney's fees and costs incurred pursuant to California Labor Code section 1194;
 - d. Liquidated damages pursuant to California Labor Code section 1194.2;
4. As to the Third Cause of Action:
 - a. Wages in an amount to be proven at trial;
 - b. Attorney's fees, costs and interest pursuant to California Code of Civil Procedure section 1021.5;
5. As to the Fourth Cause of Action:
 - a. Wages in an amount to be proven at trial;
 - b. Attorney's fees, costs and interest pursuant to California Code of Civil Procedure section 1021.5;

1 6. As to the Fifth Cause of Action:

- 2 a. Penalties as provided for in Labor Code section 226, including the greater of all
3 actual damages or fifty dollars (\$50.00) for the initial pay period in which the
4 violation occurred and one hundred dollars (\$100.00) per employee for each
5 violation in the subsequent pay periods, but not to exceed four thousand dollars
6 (\$4,000.00);
- 7 b. For reasonable attorney's fees and costs incurred pursuant to Labor Code section
8 226(e);

9 7. As to the Eighth Cause of Action:

- 10 a. For civil penalties as provided for in the Labor Code for each enumerated
11 violation;
- 12 b. For those Labor Code sections, the violation of which there is no civil penalty
13 provided, the default penalty provided in Labor Code section 2699(f): for any
14 initial violation, one hundred dollars (\$100) for each aggrieved employee per pay
15 period; For any subsequent violation, two hundred dollars (\$200) for each
16 aggrieved employee per pay period;
- 17 c. Reasonable attorney's fees and costs pursuant to Labor Code section 2699;
- 18 d. For any other remedies as allowed by law and/or deemed appropriate by the
19 Court;

20 8. As to the Ninth Cause of Action:

- 21 a. An amount to be proven at trial;
- 22 b. For attorney's fees, interest, and costs pursuant to Labor Code section 2802(c);

23 9. As to the Tenth Cause of Action:

- 24 a. An amount to be proven at trial;

25 10. For such other and further relief as this Court may deem just and proper,
26 including, but not limited to:

- 27 a. Wages as proved at trial;
- 28 b. Injunctive and Declaratory relief;

- 1 c. Attorney's fees and costs as provided for by law; and
2 d. Interest.

3
4 Dated: February 12, 2024

Shimoda & Rodriguez Law, PC

5
6
7 By: *Brittany Berzin*
8 Galen T. Shimoda
9 Justin P. Rodrigues
10 Brittany V. Berzin
11 Attorneys for Plaintiff
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EXHIBIT C



Shimoda & Rodriguez Law, PC
9401 East Stockton Blvd.
Suite #120
Elk Grove, CA 95624
Ph. (916) 525-0716
Fax (916) 760-3733
www.shimodalaw.com

December 5, 2023

For Online Filing:

Labor and Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

Re: *Martin v. Western Engineering Contractors, Inc.*

Dear Labor Commissioner,

As counsel for Maurece Martin (“Plaintiff”), I am writing to provide you and the following “employers” notice pursuant to California Labor Code section 2699.3. Plaintiff is submitting this second amended PAGA notice to clarify the claim period.

Western Engineering Contractors, Inc.
3171 Rippey Road
Loomis, CA 95650

Don J. Carroll
3171 Rippey Road
Loomis, CA 95650

Theresa W. Carroll
3171 Rippey Road
Loomis, CA 95650

Lyndsey C. Gregory
3171 Rippey Road
Loomis, CA 95650

Josh Wertz
3171 Rippey Road
Loomis, CA 95650

We are setting forth the “facts and theories” to support each of the counts found within this letter. Please notify us of your intent to investigate any or all of the claims alleged herein against Western Engineering Contractors, Inc., Don J. Carroll, Lyndsey C. Gregory and Josh Wertz (“Defendants”). Should you decide not to investigate, we request that you allow us to bring an action on behalf of Plaintiff and all Aggrieved Employees, pursuant to Labor Code



section 2699(a). Specifically, Aggrieved Employees shall include, but is not limited to the following: all non-exempt, hourly employees who have, or continue to, work for Defendants in California from February 14, 2022 to the present. Plaintiff may bring a Private Attorneys General Act (“PAGA”) claim for civil penalties on behalf of these individuals pursuant to *Huff v. Securitas Security Services USA, Inc.*, 23 Cal.App.5th 745, 757 (2018) (finding a plaintiff has PAGA standing if affected by one of the alleged violations; the plaintiff need not have personally experienced all the violations pursued in PAGA action).

A. FACTS

Plaintiff Maurece Martin worked for Defendants from approximately April 1, 2021 to April 16, 2021, February 11, 2022 to March 1, 2022, and March 4, 2022 to to May 16, 2022 as an hourly, non-exempt employee. Aggrieved Employees also worked for Defendants during the claim period as hourly, non-exempt employees.

Defendants failed to accurately record Plaintiff’s and Aggrieved Employees hours worked. Defendants did not accurately record employees’ precise start and end times or the precise start and end times of meal periods, to the extent any were taken. In addition, Defendants shaved time off of Plaintiff’s and Aggrieved Employees’ hours worked. Defendants also deducted time for meal periods Plaintiff and Aggrieved Employees did not receive. These practices resulted in unpaid minimum and overtime wages.

Plaintiff and Aggrieved Employees worked on prevailing wage jobs and non-prevailing wage jobs. Plaintiff and Aggrieved Employees also performed worked over eight (8) hours in a day and/or forty (40) hours in a week, earning overtime. When employees worked on prevailing wage and non-prevailing wage jobs within the same workday and/or workweek, Defendants did not correctly incorporate the value of the prevailing wage rates into Plaintiff’s and Aggrieved Employees’ regular rates of pay for the purpose of calculating overtime wages and paid sick time for non-prevailing wage overtime hours and/or the prevailing wage rate in effect for overtime on prevailing wage projects.

Defendants did not authorize and permit Plaintiff and Aggrieved Employees to take all meal and rest periods owed to them. Defendants employed Plaintiff and Aggrieved Employees for work for periods of more than five hours without providing them an off-duty meal period of at least 30 minutes. Defendants did not have a policy or practice to provide off-duty meal periods before the end of the fifth hour of work. Defendants employed Plaintiff and Aggrieved Employees for periods of more than 3.5 hours without providing them 10 minute rest periods. Defendants did not pay Plaintiff and Aggrieved Employees all missed meal and rest period premiums they were owed.

Defendants required Plaintiff and Aggrieved Employees to travel to various job sites throughout their employment using their personal vehicles. At times the locations required



Plaintiff and Aggrieved Employees to drive more than one (1) hour to or from work. Defendants did not compensate Plaintiff and Aggrieved Employees for this travel time or pay them reimbursement for mileage. Defendants also required Plaintiff and Aggrieved Employees to use their personal cellphones to communicate for work without paying them any reimbursement.

At the time of Plaintiff's and Aggrieved Employees' separation from employment they have accrued but unused vacation owing to them that Defendants failed to pay and/or did not pay at their final rate of pay.

Due to the practices and policies outline above, Defendants did not provide Plaintiff and Aggrieved Employees with accurate wage statements. For example, the wage statements did not include accurate gross and net wages earned, total hours worked by the employee, the inclusive dates of the period for which the employee is paid, the last four digits of the employee's social security number or an employee identification number, and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee, including but not limited to rates and corresponding hours for prevailing wages, minimum and overtime wages, paid sick time, and meal and rest period premiums.

At the time of Plaintiff's and Aggrieved Employees' termination or separation they had wages owed to them, including minimum wages, overtime wages, prevailing wages, used but not fully paid sick leave wages, and meal and rest period premiums. To date, these wages remain unpaid.

B. ALLEGATIONS AND CHARGES

Count One – Violation of Labor Code §§ 510, 1194, 1815; IWC Wage Order 16, § 3 (Failure to Pay Overtime Wages)

Labor Code sections 510 and 1194 require employers to pay employees 1 ½ times their regular rate of pay for any work in excess of eight (8) hours in one workday and any work in excess of forty (40) hours in any one workweek. Employers must also pay employees 1 ½ times their regular rate of pay for the first eight (8) hours worked on the seventh day of work in any one workweek. Finally, employers must pay employees 2 times their regular rate of pay for all hours worked in excess of twelve (12) hours in any workday and for all hours worked in excess of eight (8) hours on the seventh day of work in any one workweek. Labor Code section 1815 requires contractors to pay employees on public works jobs 1 ½ times the basic rate of pay for any work in excess of eight (8) hours in one workday and any work in excess of forty (40) hours in any one workweek. As stated above, Plaintiff and Aggrieved Employees worked over eight (8) hours per day and forty (40) hours per week and were not paid all overtime wages owed. Plaintiff and all Aggrieved Employees are entitled to recover all unpaid overtime wages. Failure to pay such wages is against the law.



Count Two – Violation of Labor Code §§ 1194, 1197.1; IWC Wage Order 16, § 4 (Failure to Pay Minimum Wages)

During the period Plaintiff and Aggrieved Employees were employed by Defendants they were entitled to be paid at least the State’s minimum wage rate for each hour that they worked. *See, e.g.*, IWC Wage Order MW-2019; IWC Wage Order No. 16, § (4); Cal. Lab. Code §§ 1194, 1197.1. For the reasons stated above, Defendants did not pay Plaintiff and Aggrieved Employees for all hours worked. Thus, Plaintiff and Aggrieved Employees were not paid at least the applicable state minimum wage for those hours worked. This is against the law.

Count Three - Violation of Labor Code §§ 226.7, 512 and Wage Order No. 16, §§ 11(A) and 11(B) (Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof)

Labor Code section 226.7 and Wage Order No. 16, section 11(A) require employers to provide employees meal periods of thirty (30) minutes per five (5) hours worked, which is to be taken before the completion of the fifth hour. Labor Code section 512 and Wage Order No. 16, section 11(B) further provide that employers may not employ employees for a work period of more than ten (10) hours per day without providing the employee with a second meal period of thirty (30) minutes; however, if the total hours worked is no more than twelve (12) hours, the second meal period may be waived so long as there was no waiver as to the first meal period. For the reasons stated above, Plaintiff and Aggrieved Employees were not authorized and permitted to take legally compliant meal periods pursuant to California law. Defendants also failed to pay any meal period premiums for their failure to provide meal periods. This was in violation of the law.

Count Four – Violation of Labor Code § 226.7 and Wage Order No. 16, § 12(A) (Failure to Provide Rest Periods or Pay Premiums in Lieu Thereof)

Labor Code section 226.7 and Wage Order No. 16, section 12(A) require employers to provide employees paid off-duty rest periods of ten (10) minutes per four (4) hours or major fraction thereof worked. For the reasons stated above, Plaintiff and Aggrieved Employees were not authorized and permitted to take legally compliant rest periods pursuant to California law. Defendants also failed to pay any rest period premiums for their failure to provide rest periods. This was in violation of the law.

Count Five – Violation of Labor Code §§ 226, 226.3 (Failure to Provide Accurate Wage Statements)

Labor Code section 226 requires employers to furnish to employees with “an accurate itemized statement in writing showing (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 (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 . . .” For the reasons stated above, Defendants failed to comply with these requirements with respect to Plaintiff and Aggrieved Employees. This is in violation of the law.

Count Six – Violation of Labor Code §§ 201-203, 256 (Failure to Pay Final Wages)

Labor Code sections 201-203 require that all wages, including minimum wages, overtime wages, prevailing wages, sick time, and meal and rest period premiums, be paid to employees upon separation and/or termination of employment. Here, for the reasons stated above, Plaintiff and Aggrieved Employees did not receive all final wages due and owing to them at the time of termination or seventy-two (72) hours thereafter as required by Labor Code sections 201-203. This is in violation of the law.

Count Seven – Violation of Labor Code §§ 558, 558.1 (Provisions Regulating Hours and Days of Work in Any Industrial Welfare Commission Order)

Labor Code section 558 states that it is unlawful for any employer, or other person acting on behalf of an employer, to violate or cause to be violated any of sections 500 to 558.1 of the Labor Code or any order of the Industrial Welfare Commission. Similarly, Labor Code section 558.1 states that it is unlawful for any employer or other person acting on behalf on an employer to violate, or cause to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, as well as Sections 203, 226, 226.7, 1193.6, 1194, or 2802 of the Labor Code. As described above, Defendants, by and through Defendants agents, violated Plaintiff and Aggrieved Employees’ rights provided for under Labor Code sections 558 and 558.1 as well as the incorporated Wage Orders and incorporated statutes therein. Don J. Carroll, Lyndsey C. Gregory and Josh Wertz were officers, directors, shareholders, and/or managing agents of Western Engineering Contractors, Inc. responsible for the violations stated herein as they were in a position of authority with the power and responsibility to monitor, institute, and/or modify the unlawful practices, but chose to ratify them instead. This is against the law.

Count Eight – Violation of Labor Code §§ 226.3, 1174, 1815, 1198 and Wage Order No. 16, § 6(A) (Failure to Maintain Accurate Records)

Labor Code section 226.3 provides that any employer who fails to maintain records required by Labor Code section 226(a) or provide records required by 226(a) shall be subject



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. Labor Code section 1174(d) provides that employers must keep and maintain accurate payroll records showing the hours worked daily by, and the wages paid to, employees. Defendants failed to maintain the accurate records required by law and, instead, maintained incomplete, inaccurate records regarding Plaintiff and Aggrieved Employees' wage records and hours worked. This was against the law.

Labor Code section 1198 provides the standard conditions of labor fixed by the commission shall be the standard conditions of labor for employees. The records requirement in Wage Order No. 16, § 6(A) is a "standard condition of labor fixed by the commission." *See* Cal. Labor Code § 1198. It provides, "Every employer who has control over wages, hours, or working conditions shall keep accurate information with respect to each employee, including ... time records showing when the employee begins and ends each work period. Meal periods, split shift intervals, and total daily hours worked shall also be recorded ... Total hours worked during the payroll period and applicable rates of pay..." *See* Wage Order No. 16, § 6(A)(1)-(3). Defendants failed to keep accurate records in compliance with Wage Order No. 16, § 6(A) and Labor Code § 1198. This was against the law.

Labor Code section 1812 requires every contractor and subcontractor to keep an accurate record showing the name of and actual hours worked each calendar day and each calendar week by each worker employed by him or her in connection with the public work. Defendants failed to maintain accurate records of Plaintiff's and Aggrieved Employees' actual hours worked. This was against the law.

Count Nine – Violation of Labor Code §§ 246, 246.5, 248.5 (Failure to Provide Paid Sick Leave)

Labor Code sections 246, *et seq.*, mandate that employers must provide California employees, who work thirty (30) or more days within a year for the employer, paid sick leave of at least one (1) hour for every thirty (30) hours worked that begins to accrue at the commencement of employment. An employer may use a different accrual method, other than providing one hour per every 30 hours worked, provided that the accrual is on a regular basis so that an employee has no less than twenty-four (24) hours of accrued sick leave or paid time off by the 120th calendar day of employment or each calendar year, or in each 12-month period. An employer may limit the use of sick leave to either twenty-four (24) hours or the equivalent of three (3) days, whichever is greater, during a year period. However, employers using an accrual method rather than a lump sum method must allow employees to accrue up to forty-eight (48) hours or the equivalent of six (6) days at any given time. Employers must authorize employees to take paid sick leave under the conditions set forth in the Healthy Workplaces, Healthy Families Act of 2014 ("HWHFA") for the diagnosis, care, or treatment of an existing health condition of, or preventive care for, an employee or an employee's family member. Any sick



leave taken must be paid at the employee's regular rate of pay. For the reasons state above, Defendants failed to provide Plaintiff and Aggrieved Employees with sick leave and/or sick leave wages meeting the requirements set forth in HWHFA. Plaintiff will be seeking equitable, injunctive, and restitutionary relief to remedy these violations.

Count Ten – Violation of Labor Code § 2802 (Failure to Pay Reimbursements for Expenses)

Labor Code section 2802(a) states that “An 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, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.” Defendants failed to pay any reimbursements for personal cellphone use and personal vehicle use by Plaintiff and Aggrieved Employees. This was in violation of the law.

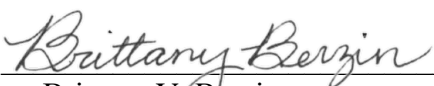
Count Elevent – Violation of Labor Code § 227.3 (Failure to Pay Accrued Vacation)

Labor Code section 227.3 provides, “[u]nless otherwise provided by a collective-bargaining agreement, whenever a contract of employment or employer policy provides for paid vacations, and an employee is terminated without having taken off his vested vacation time, all vested vacation shall be paid to him as wages at his final rate in accordance with such contract of employment or employer policy respecting eligibility or time served; provided, however, that an employment contract or employer policy shall not provide for forfeiture of vested vacation time upon termination. The Labor Commissioner or a designated representative, in the resolution of any dispute with regard to vested vacation time, shall apply the principles of equity and fairness.” Defendants failed to pay Aggrieved Employees all of their accrued but unused vacation and/or failed to pay it at their final rate of pay. This was against the law.

If you have any questions or require any further information regarding the facts and theories to support these claims, do not hesitate to contact our office.

Very truly yours,

Shimoda & Rodriguez Law, PC

By: 
Brittany V. Berzin

BVB:sb
cc: Client via e-mail

1 *Martin v. Western Engineering Contractors, Inc.*

2 **PROOF OF SERVICE — CCP §§ 1013a and 2015.5**
3 **and California Rules of Court, Rule 1.21 and Rule 2.150**

4 I, Shaniya Baird, declare that:

5 I am a citizen of the United States and am over the age of eighteen years and not a party to
6 the within above-entitled action.

7 On December 6, 2023, I served the following documents on the party below:

8 • **AMENDED PRIVATE ATTORNEY GENERAL ACT LETTER**

9

10 Western Engineering Contractors, Inc. 3171 Rippey Road Loomis, CA 95650	Don J. Carroll 3171 Rippey Road Loomis, CA 95650
12 Theresa W. Carroll 3171 Rippey Road Loomis, Ca 95650	Lyndsey C. Gregory 3171 Rippey Road Loomis, Ca 95650
14 Josh Wertz 3171 Rippey Road Loomis, Ca 95650	

17

18 [XXX] [By Certified Mail] I am familiar with my employer's practice for the collection
19 and processing of correspondence for mailing with the United States Postal
20 Service and that each day's mail is deposited with the United States Postal
21 Service that same day in the ordinary course of business. On the date set forth
above, I served the aforementioned document(s) on the parties in said action by
placing a true copy thereof enclosed in a sealed envelope with postage thereon
fully prepaid, for collection and mailing on this date, following ordinary business
practices, at Elk Grove, California, addressed as set forth above.

22 [] [By Personal Service] By personally delivering a true copy thereof to the office
23 of the addressee above.

24 [] [By Overnight Courier] By causing a true copy and/or original thereof to be
personally delivered via the following overnight courier service:_____.

25 I declare under penalty of perjury under the laws of the State of California that the foregoing
26 is true and correct, and that this declaration was executed on December 6, 2023, at Salt Lake City,
27 Utah.

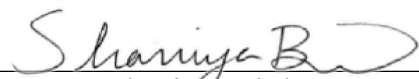
28 
Shaniya Baird

EXHIBIT D



Quotation Request:

Brittany Berzin
Shimoda & Rodriguez Law, PC
bberzin@shimodalaw.com
833.201.0213

Case Name:

Martin v. Western Engineering Contractors Inc.

Date:

Monday, October 9, 2023

RFP Number:

02130005

Prepared By:

Sean Hartranft
Apex Class Action LLC
Sean@apexclassaction.com
949.878.3676

Settlement Specifications

Estimated Class Size:	92
Certified Language Translation:	Optional
Static Settlement Website	Yes
Percentage of Undeliverable Mail	20%

Professional Services	Fee Calculation	Rate(s)	Quantity	Estimated Cost
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Data Analytics and Standardization

Import and Standardize Data*	Per Hour	\$125.00	1	\$125.00
Data Analyst	Per Hour	\$150.00	1	\$150.00
Sub Total:				\$275.00

*Data provided must be in a workable format. Apex can standardized provided data at an additional cost of \$150/hr.

Mailing of Class Notice

Form Set Up	Per Hour	\$120.00	1	\$120.00
Print & Mail Class Notice	Per Piece	\$2.00	92	\$184.00
USPS First Class Postage	Per Piece	\$0.87	92	\$80.04
Remail Undeliverable Mail (Skip-Trace)	Per Piece	\$3.00	18	\$55.20
Receive and Process Undeliverable Mail	Per Hour	\$75.00	0	\$0.00
Process Class Member Correspondence via mail, e-mail & fax	Per Piece	\$75.00	1	\$75.00
NCOA Address Update (USPS)	Static Rate	\$20.00	1	\$20.00
Certified Language Translation: Spanish	Static Rate	\$1,200.00	Optional	\$1,200.00
Sub Total:				\$1,734.24

Project Management

Project Management	Per Hour	\$150.00	2	\$300.00
Project Coordinator	Per Hour	\$90.00	1	\$90.00
Data Analyst and Reporting	Per Hour	\$140.00	1	\$140.00
Sub Total:				\$530.00



Professional Services	Fee Calculation	Rate(s)	Quantity	Estimated Cost
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Toll-Free Contact Center, Website & Reporting				
Bilingual Toll-Free Contact Center	Static Rate	\$18.64	1	\$18.64
Settlement Website: Static Apex URL	Static Rate	\$500.00	1	\$500.00
Settlement Status Reports	Static Rate	\$750.00	1	Waived
			Sub Total:	\$518.64

Distribution & Settlement Fund Management				
Settlement Calculations (Preliminary and Final)	Per Hour	\$120.00	2	\$240.00
Account Management and Reconciliation	Per Hour	\$140.00	2	\$280.00
Print & Mail Distribution Settlement Check (W-2/1099)	Per Piece	\$1.50	92	\$138.00
USPS First Class Postage	Per Piece	\$0.66	92	\$60.72
Remail Distribution to Updated Address (Skip Trace)	Per Piece	\$2.00	9	\$18.40
Individual Income Tax Preparation & Reporting	Per Hour	\$100.00	5	\$500.00
QSF Income Tax Reporting (per calendar year)	Per Year	\$1,250.00	1	\$1,250.00
			Sub Total:	\$2,487.12

Post Distribution Reconciliation				
Bank Account Reconciliation	Per Hour	\$135.00	1	\$135.00
Project Management Reconciliation	Per Hour	\$100.00	1	\$100.00
Declarations	Per Hour	\$120.00	1	\$120.00
			Sub Total:	\$355.00

TOTAL ESTIMATED ADMINISTRATION COST:	\$4,700.00
TOTAL ESTIMATED ADMINISTRATION COST WITH CERTIFIED SPANISH TRANSLATION:	\$5,900.00

Thank you for your business!



Terms & Conditions

The following Terms and Conditions govern the provision of all services to be provided by Apex Class Action and its affiliates ("Apex") to the Client. These terms and conditions are binding and shall apply to all services provided by Apex in relation to any related services or products.

1. Services: Apex commits to providing the Client with the administrative services detailed in the attached Proposal (the "Services").

2. Payment Terms: As compensation for the legal services to be provided, the Client agrees to pay Apex all fees detailed in the Proposal. The fees quoted in the Proposal (and any subsequent proposals for additional services) are estimates based on the information provided to Apex by the Client. Apex makes no representation that the estimated fees in the Proposal or any subsequent proposals for additional services shall equal the actual fees charged by Apex to the Client, which fees (including individual line items) may be greater or less than estimated. If additional services are requested on an hourly basis and are not specifically detailed in the Proposal, Apex will prepare estimates for such services subject to approval by the Client. In the performance of such additional services, Apex will charge standard hourly fees which shall apply.

3. Incurred Expenses: In relation to the provision of services outlined in this agreement, the Client agrees to reimburse Apex for all reasonable out-of-pocket expenses incurred. Such expenses may include, but are not limited to, costs associated with postage, media production or publication, banking fees, brokerage fees, messenger and delivery service expenses, travel expenses, filing fees, office supplies, meals, staff overtime expenses, and other related costs and expenses. If not otherwise specified in writing, fees for print notice and certain expenses, such as media publication and postage, must be paid immediately upon invoicing and, in certain cases, at least ten (10) days prior to the date on which such expenses will be incurred.

4. Invoicing: Apex shall present invoices for its fees and expenses on a monthly basis, except as provided in Section 3. The Client agrees to pay each invoice within 30 days of receipt. In case of non-payment within 90 days of the billing date, an additional service charge of 1.5% per month may apply. Apex reserves the right to increase its prices, charges, and rates annually, subject to reasonable adjustments. If any price increases exceed 10%, Apex shall give thirty (30) days' notice to the Client. In the event of any unpaid invoices beyond 120 days of the due date, Apex reserves the right to withhold services and reports until payment is received, subject to notice to the Client. It is important to note that Apex's failure to provide services and reports in such instances shall not constitute a default under this agreement.

5. Case Duration: The duration of these Terms and Conditions, except for the data storage obligations stated in Section 13, shall be in effect until 30 days following the completion of the Services as described in the Proposal. The parties may extend these Terms and Conditions in writing for a mutually agreed-upon period beyond this initial 30-day period.

6. Termination of Services: Either party may terminate the Services by providing thirty (30) days written notice to the other party. Alternatively, termination may occur immediately upon written notice for Cause, as defined below. Cause means (i) Apex's gross negligence or willful misconduct that causes serious and material harm to the Client; (ii) the Client's failure to pay Apex invoices for more than one hundred twenty (120) days from the date of the invoice; or (iii) the accrual of invoices or unpaid services where Apex reasonably believes it will not be paid. Termination of the Services shall not relieve the Client of its obligation to pay Apex for services rendered prior to the termination.

7. Independent Contractor: As an independent contractor, Apex will provide services under the terms of this agreement. It is agreed that neither Apex nor any of its employees will be considered an employee of the Client. Consequently, Apex and its employees will not be eligible for any benefits provided by the Client to its employees. The Client will not make any tax deductions from the payments due to Apex for state or federal tax purposes. Apex will be solely responsible for paying all taxes and other payments due on payments received from the Client under this agreement.

8. Apex warrants that the Services outlined in the Proposal will be performed in accordance with the standards generally adhered to by professionals providing similar services. It is acknowledged that the Services may entail the likelihood of some human and machine errors, omissions, delays, and losses that may result in damage. However, Apex shall not be held liable for such errors, omissions, delays, or losses unless they are caused by its gross negligence or willful misconduct. In the event of any breach of this warranty by Apex, the Client's sole remedy will be limited to Apex's reworking, at its expense, any inaccurate output provided that such inaccuracies occurred solely as a result of Apex's gross negligence or willful misconduct under this agreement.

9. Limitation of Liability: The Client acknowledges that Apex shall not be held liable for any consequential, special, or incidental damages incurred by the Client in relation to the performance of Services, whether the claim is based on breach of warranty, contract, tort (including negligence), strict liability, or any other grounds. Under no circumstances shall Apex's liability to the Client, for any Losses (including court costs and reasonable attorney's fees), arising out of or in connection with these Terms and Conditions, exceed the total amount charged or chargeable to the Client for the specific service(s) that caused the Losses.

10. Indemnification: The Client agrees to indemnify and hold harmless Apex from any losses, suits, actions, judgments, fines, costs, liabilities, or claims arising from any action or proceeding relating to the Services provided by Apex, regardless of whether or not it results in liability (collectively referred to as "Indemnified Claims"). However, this indemnification provision shall not apply to the extent that such Indemnified Claims are caused by Apex's willful misconduct, gross negligence, or breach of these Terms and Conditions. This provision shall survive termination of the Services.

11. Confidentiality: Apex will uphold strict confidentiality between Apex and the Client and applies to all non-public records, documents, systems, procedures, processes, software, and other information received by either party in connection with the performance of services under these terms. Both Apex and the Client agree to keep confidential all such non-public information, including any material marked or identified as confidential or proprietary. Any such confidential information shall not be disclosed, provided, disseminated, or otherwise made available to any third party, except as required to fulfill the parties' obligations under these terms. The parties acknowledge that in the event of any request to disclose any confidential information in connection with a legal or administrative proceeding, or otherwise to comply with a legal requirement, prompt notice of such request must be given to the other party to enable that party to seek an appropriate protective order or other remedy or to waive compliance with the relevant provisions of these terms. If the Client seeks a protective order or another remedy, Apex, at the Client's expense, will cooperate with and assist the Client in such efforts. If the Client fails to obtain a protective order or waives compliance with the relevant provisions of these terms, Apex will disclose only that portion of the confidential information that it determines it is required to disclose. This confidentiality provision shall survive termination of the services provided. Both parties acknowledge and agree that any breach of these terms may cause irreparable harm to the non-breaching party and that injunctive relief may be necessary to prevent any actual or threatened breach. The terms set forth between the parties supersede all prior negotiations, understandings, and agreements between the parties concerning confidentiality. These terms may only be amended in writing and signed by both parties.

12. Ownership of the programs, system data, and materials provided by Apex to the Client during the course of providing services herein shall solely belong to Apex. It is acknowledged that fees and expenses paid by the Client do not confer any rights in such property. It is also understood that the said property is made available to the Client solely for the purpose of using it during and in connection with the services provided by Apex.

13. Upon the completion of the administration and unless retention instructions are ordered by the court, Apex will notify the client that it will destroy and/or return all confidential information and property within 90 days upon the client's written request. Alternatively, the material may be stored for one year at a monthly fee of \$1.50 per storage box for paper documents and \$0.01 per image for electronic copies over a period of three years, which compensates Apex for its electronic and hard-copy storage costs. Apex will not be liable for any damages, liability, or expenses incurred in connection with any delay in delivery of, or damage to disks, magnetic tapes, or any input data provided by the client or its representatives unless Apex has agreed in writing to assume such responsibility.

14. COMPLETE AGREEMENT. These Terms and Conditions, along with the attached Proposal, represent the complete agreement and understanding between the parties and override any prior agreements (whether written or oral) between Apex and the Client regarding the subject matter. Any modification to these Terms and Conditions may only be made in writing and must be signed by both Apex and the Client. The headings in this document are included for convenience only and do not alter or restrict any provisions in these Terms and Conditions. They may not be used in the interpretation of these Terms and Conditions.

15. This provision outlines the requirements for providing notice or other communication under this agreement. All such communications must be in writing and can be delivered either by personal delivery or through U.S. Mail with prepaid postage or overnight courier. Once delivered personally or sent through the mail, the notice will be considered given after five (5) days from the deposit date in the U.S. Mail. Alternatively, if sent through an overnight courier, the notice will be considered given one business day after delivery to the such courier. It's important to note that the notice must be provided to a responsible officer or principal of the Client or Apex, depending on the case.

16. Force Majeure: In the event of any failure or delay in performance due to circumstances beyond Apex's control, including but not limited to strikes, lockouts, fires, floods, acts of God or public enemy, riots, civil disorders, insurrections, war or war conditions, or interference by civil or military authorities, Apex shall not be held liable for any resulting loss or damage. The time for performance under this agreement shall be extended for a period equal to the duration of the disabling cause and a reasonable time thereafter. This provision shall constitute a force majeure clause and shall be construed accordingly.

17. The applicable state and federal laws shall govern the interpretation and enforcement of these Terms and Conditions. No choice of law or conflict of laws provisions shall affect this governing law provision.

18. Severability: This applies to all clauses and covenants contained within these Terms and Conditions. In the event that any clause or covenant is deemed invalid, illegal, or unenforceable, the remaining provisions shall remain valid and enforceable to the fullest extent permissible by law. The validity, legality, and enforceability of the remaining provisions shall in no way be affected or impaired by the invalidity, illegality, or unenforceability of any provision deemed so.

19. Nonwaiver: This applies to these Terms and Conditions. This means that any failure by one party to enforce a provision of these terms on one or more occasions shall not be construed as a waiver of that provision. In other words, any failure to enforce a provision does not give up the right to enforce it in the future. All provisions of these Terms and Conditions remain in full force and effect, regardless of any prior failure to enforce them.

EXHIBIT E

Martin v. Western Engineering Contractors - Shimoda & Rodriguez Law, PC Costs

Date	Description	Amount
2/13/23	PAGA Filing Fee	\$75.00
2/13/23	Certified Mail - PAGA Letter	\$47.40
2/27/23	One Legal Fee - File Complaint and pay Complex Fee	\$1,556.09
3/9/23	Administration/Copy Fee - Class Action - Phone, Fax, Scan, Copying, Westlaw Legal Research Fees	\$500.00
5/26/23	Mediator Fees	\$3,375.00
6/1/23	One Legal Fee - Amended Complaint	\$78.76
10/17/23	Mediator Remaining Fees	\$960.00
11/29/23	Certified Mail - Amended PAGA Letter	\$43.85
12/6/23	Certified Mail - Second Amended PAGA Letter	\$43.85
1/22/24	One Legal Fee - Joint CMC	\$16.88
2/13/24	One Legal Fee - Stip and Order to file Second Amended Complaint	\$37.47
Anticipated	One Legal Fee - Joint CMC	\$16.88
Anticipated	One Legal Fee - File PAM	\$300.00
Anticipated	Court Fee - PAM	\$60.00
Anticipated	One Legal Fee - File FAM	\$300.00
Anticipated	Court Fee - FAM	\$60.00
Anticipated	One Legal Fee - Compliance Declarations	\$30.00
TOTAL:		\$7,501.18

EXHIBIT F

CALIFORNIA SUPERIOR COURT
FOR THE COUNTY OF SACRAMENTO

MAURECE MARTIN, individually and on
behalf of all other similarly situated employees,

Plaintiff,

vs.

WESTERN ENGINEERING CONTRACTORS,
INC., a California Corporation; and DOES 1 to
100, inclusive,

Defendants.

Case No. 34-2023-00334816

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

ATTENTION: all non-exempt, hourly employees who have, or continue to, work for Western Engineering Contractors, Inc. in California, and who did not sign an arbitration agreement with a class action waiver, from February 15, 2019 up to October 8, 2023 (the “Class Members”) and all non-exempt, hourly employees who have, or continue to, work for Western Engineering Contractors, Inc. in California from February 14, 2022 up to October 8, 2023 (“Aggrieved Employees”).

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

You are receiving this notice pursuant to an order from the Sacramento County Superior Court (“Court”) granting Plaintiff’s motion for preliminary approval of a Joint Stipulation Regarding Class Action and PAGA Settlement and Release (“Agreement” or “Settlement”) as fair, reasonable, and adequate. The Settlement was entered into between Plaintiff Maurece Martin (“Plaintiff” or “Class Representative”), and Defendant Western Engineering Contractors, Inc. (“Defendant”) on behalf of Class Members and Aggrieved Employees as defined above. The terms of the Settlement are outlined herein. You are receiving this notice because Defendant’s records indicate you fall within the definition of “Class Member” and/or Aggrieved Employee. Defendant’s records also indicate that you worked [redacted] weeks during the applicable Class Period and/or PAGA period (as defined below), which means your total share of the settlement proceeds is estimated to be [redacted]. Your actual share of the settlement proceeds may 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

On February 15, 2023, Plaintiff filed a Complaint against Defendant in the Sacramento County Superior Court of California on behalf of himself and Class Members. The term “Action” means this putative class action pending in Sacramento County Superior Court, Case No. 34-2023-00334816. The Class Period is from February 15, 2019 up to October 8, 2023 (the “Class Period”). On February 14, 2023, Plaintiff filed a Private Attorneys General Act (“PAGA”) notice with the Labor Workforce Development Agency and, on May 25, 2023, Plaintiff filed a First Amended Complaint adding a cause of action under the Private Attorneys General Act on behalf of himself and Aggrieved Employees. The PAGA Claim Period is from February 14, 2022 up to October 8, 2023 (the “PAGA Claim Period”). Plaintiff filed an amended PAGA notice on December 5, 2023 and filed a Second Amended Complaint on [redacted date].

In the Action, Plaintiff sought to obtain unpaid wages, interest, unpaid expenses, statutory penalties, civil penalties, fees, and costs on behalf of himself, Class Members, and Aggrieved Employees by alleging claims for failure to pay overtime wages, failure to pay minimum wages, meal period violations, rest period violations, wage statement violations, waiting time penalties, failure to provide paid sick leave, unfair competition, violations of the Private Attorneys General Act, failure to reimburse business expenses, and failure

to pay accrued vacation. Plaintiff alleged that Defendant violated California law by 1) failing to accurately record and maintain employees' hours worked; 2) failing to pay for all hours worked, including travel time; 3) failing to authorize and permit putative class members to take all meal and rest periods or to pay premiums in lieu thereof; 4) failing to include the inclusive dates of the pay period and employees' last 4 digits of their social security number or employee identification number on wage statements issued to putative class members; 5) failing to incorporate the value of prevailing wage rates into employees' paid sick leave and regular rates of pay for the purpose of calculating overtime wages on non-prevailing wage jobs; 6) failing to reimburse the use of personal cell phones and vehicles; and 7) failing to pay accrued and unused vacation pay at all or at an employee's final regular rate of pay at the time of separation. 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 settlement. By settling, the Parties will avoid the risks associated with a lengthy litigation process. Despite agreeing to and supporting the Agreement, Defendant continues to deny all allegations and claims. Defendant does not admit any liability to Plaintiff or to any other current or former employees, and Defendant does not admit that any violations of Plaintiff's rights, or the rights of any other current or former employees has occurred. The Court has not made any determination as to whether the claims advanced by Plaintiff have any merit.

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 Agreement applies to any and all Class Members, which are defined as all non-exempt employees who have, or continue to, work for Defendant in California, and who did not sign an arbitration agreement with a class action waiver, from February 15, 2019 up to October 8, 2023. The Agreement also applies to Aggrieved Employees, which are defined as all non-exempt, hourly employees who have, or continue to, work for Defendant in California from February 14, 2022 up to October 8, 2023. 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 Class Members of how they can either participate in the Settlement or be excluded from the Settlement. As set forth below, Aggrieved Employees cannot opt out of this Agreement as it relates to the PAGA Payment or Released PAGA Claims regardless of whether they opt out of being a Class Member. Aggrieved Employees will receive their share of the PAGA Payment regardless of whether they opt out of being a Class Member.

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 and Seventeen Thousand Five Hundred (\$417,500) ("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, attorneys' costs not to exceed \$10,000, Settlement Administrator Costs estimated not to exceed \$10,000, Class Representative's Enhancement Payment of \$10,000, and \$41,750 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 \$41,750 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 based on the number of workweeks worked during the PAGA Claim Period.

The number of weeks you worked during the Class Period and your estimated total share of the Net Settlement Amount and PAGA Payment ("Individual Settlement 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 (*i.e.*, those who do not opt out of the Settlement), 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. Individual Settlement Amounts and Allocation Between Class Members and Aggrieved Employees

Defendant will pay Individual Settlement Amounts through the Settlement Administrator, as described below, to each Participating Class Member and to Aggrieved Employees. All Individual Settlement Amounts will be subject to appropriate taxation. The Parties have agreed, based on the allegations in the Action, that all Individual Settlement 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 Participating Class Members and Aggrieved Employees will not require the submission of a claim form. Each Participating Class Member's share will be determined by dividing their total weeks worked within the Class Period by the total weeks worked by all Participating 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. The PAGA Claim Period is defined as from February 14, 2022 up to October 8, 2023. Defendant's records indicate that you worked [REDACTED] weeks during the applicable PAGA Claim Period, which means your share of the PAGA Payment is estimated to be [REDACTED]. This amount is included in your estimated Individual Settlement Amount stated on the first page of this notice, not in addition to it. You will still receive your share of the PAGA Payment even if you opt out of being a Class Member or do not meet the definition of Class Member. Receipt of the Individual Settlement 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 Settlement Administrator from Defendant's records. Defendant's records will be presumed correct unless evidence to the contrary is provided to the Settlement Administrator. Defendant's records and any additional evidence will be reviewed by the Settlement Administrator in the event of a dispute about the number of workweeks worked by an individual Class Member or Aggrieved Employee. If a Class Member / Aggrieved Employee disputes the accuracy of Defendant's records, all supporting documents evidencing additional workweeks must be submitted by the Class Member or Aggrieved Employee. 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 [REDACTED]. The dispute will be resolved by the Settlement Administrator based on the records and evidence provided.

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 that are alleged in the operative Complaint, and any additional wage and hour claims that could have been brought based on the facts alleged in the operative Complaint, through the Class Period. This release includes but is not limited to claims for (1) failure to pay overtime wages (CA Labor Code §§ 510, 558, 558.1, 1194, 1815 and Wage Order 16, § 3); (2) failure to pay minimum wages (CA Labor Code § 1194, 1194.2, 1197.1 and Wage Order 16 § 4); (3) meal period violations (CA Labor Code §§ 226.7, 512 and Wage Order 16 § 11(A), (B)); (4) rest period violations (CA Labor Code § 226.7 and Wage Order 16 § 12(A)); (5) wage statement penalties (CA Labor Code §§ 226, 226.3, 1174, 1815, 1198 and Wage Order 16, § 6(A)); (6) waiting time penalties (CA Labor Code §§ 201-203, 256); (7) Failure to Provide Paid Sick Leave (CA Labor Code §§ 246, 246.5, 248.5); (8) unfair competition (CA Business & Professions Code § 17200, et seq.); (9) Private Attorneys General Act, (10) Failure to Reimburse for Business Expenses (CA Labor Code § 2802); and (11) Failure to Pay Accrued Vacation (CA Labor Code § 227.3). This release excludes the release of claims not permitted by law. This release will cover all Class Members who do not opt out.

Aggrieved Employees will be deemed to have released any and all claims for civil penalties that were brought under the Private Attorneys General Act, Labor Code §§ 2698 *et seq.*, contained in Plaintiff's operative Complaint, Plaintiff's PAGA letters to the Labor Workforce Development Agency and any additional wage and hour PAGA claims that could have been brought based on the facts alleged in the operative Complaint and PAGA letters during the PAGA Claim Period. This release includes but is not limited to claims for (1) Failure to Pay Overtime Wages (CA Labor Code §§ 510, 1194, 1815; IWC Wage Order 16, § 3); (2) Failure to Pay Minimum Wages (CA Labor Code §§ 1194, 1197.1, IWC Wage Order 16, § 4); (3) Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof (CA Labor Code §§ 226.7, 512 and Wage Order 16, § 11(A), (B)); (4) Failure to Provide Rest Breaks or Pay Premiums in Lieu Thereof (CA Labor Code § 226.7 and IWC Wage Order 16, § 12(A)); (5) Failure to Provide Accurate Wage Statements (CA Labor Code §§ 226, 226.3); (6) Failure to Pay Final Wages (CA Labor Code §§ 201-203, 256); (7) Violation of Provisions Regulating Hours and Days of Work in any Industrial Welfare Commission Order (CA Labor Code §§ 558, 558.1, 1193.6, 2802); (8) Failure to Maintain Accurate Records (CA Labor Code §§ 226.3, 1174, 1815, 1198 and IWC Wage Order 16, § 6(A)); (9) Failure to Provide Paid Sick

Leave (CA Labor Code §§ 246, 246.5, 248.5); (10) Failure to Reimburse for Business Expenses (CA Labor Code § 2802); and (11) Failure to Pay Accrued Vacation (CA Labor Code § 227.3). Aggrieved Employees cannot opt out of this waiver of claims.

The individuals released (“Released Parties”) include Defendant, as well as Defendant’s current and former officers, shareholders, directors, agents, employees, attorneys, and insurers, including but not limited to Don J. Carroll, Theresa W. Carroll, Lyndsey C. Gregory and Josh Wertz

Class Members and/or Aggrieved Employees can talk to the Court-approved Settlement Administrator, Apex Class Action, if they have any questions..

III. WHAT ARE YOUR RIGHTS AS A CLASS MEMBER

A. Participating in the Settlement as a Class Member

If you wish to be a Participating Class Member 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 as a Class Member

The Court will exclude you from the being a Class Member if you request this by [REDACTED]. If you do not wish to be bound by the Settlement as a Class Member, you may request to be excluded (i.e., “opt out”) by submitting a timely written request to the Settlement 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 want to be excluded from this Settlement; (c) identify the case name and number (i.e. *Martin v. Western Engineering Contractors, Inc.*, 34-2023-00334816); (d) be signed; and (e) be post-marked no later than [REDACTED]. The request to opt out must be mailed by First Class U.S. Mail, or the equivalent, to:

[admin info]

If you submit a request to opt out which is not postmarked by [REDACTED], your request to opt out will be rejected, and you will be bound by the release and all other terms of the Agreement. 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 Settlement Administrator, no longer be a Class Member and not received their share of the Net Settlement Amount. 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 Settlement. However, if the Court rejects your objection, you will still be bound by the terms of the Settlement. 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. 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 supporting documentation; (d) identify the case name and number (i.e. *Martin v. Western Engineering Contractors, Inc.*, 34-2023-00334816) (e) be signed; and (f) be post-marked no later than [REDACTED]. The objection must be sent to the Settlement 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.

You may also appear at the final approval hearing to state your objection. Any Class Member who does not request exclusion may, if the Class Member so desires, enter an appearance through an attorney. If you appear through your own attorney, you are responsible for paying that attorney. You should also file a notice of intent to appear with the Court and serve the notice on counsel for Plaintiff and Defendant.

IV. EFFECT OF THE SETTLEMENT: RELEASED RIGHTS AND CLAIMS

If the Court grants final approval of the Settlement, the Court will make and enter judgment consistent therewith. The judgment, whether favorable or not, will bind all Class Members who do not request exclusion. After final approval, each and every Class Member who does not opt out of the Settlement and each and every Aggrieved Employee, will release Defendant and the Released Parties from the Released Class Claims and the Released PAGA 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 these releases 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 27, 720 9th Street Sacramento, California 95814, on [redacted] at [redacted] to determine whether the Agreement should be finally approved as fair, reasonable and adequate. To join by Zoom link: <https://saccourt-ca.gov.zoomgov.com/my/sscdept27>. To join by phone: (833) 568-8864 / ID: 16120204632. The Court also will be asked to approve Class Counsel's request for attorneys' fees and costs, the Settlement Administrator Costs, and the Class Representative's Enhancement Payment. The hearing may be continued without further notice. It is not necessary for you to appear at this hearing.

VI. SETTLEMENT CHECKS

Settlement checks will be null and void 180 days after issuance if not deposited or cashed. Any check not negotiated within 180 days of issuance shall be distributed to Sacramento Food Bank and Family Services. If your check is lost or misplaced, you should contact the Settlement Administrator immediately to request a replacement.

VII. ADDITIONAL INFORMATION

You may access the Complaint, Class Counsel's motion for preliminary approval, the Agreement, and any other documents required by the Court at the Settlement Administrator's website: [admin web address]. If final approval is granted, a notice of entry of order and copy of the order will be available on the Court's Public Case Access website: <https://services.saccourt.ca.gov/PublicCaseAccess/>. You can also 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
On behalf of Plaintiff

Carrie E. Bushman
Cook Brown LLP
2407 J Street Second Floor
Sacramento, CA 95816
Telephone: 916-442-3100
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 [number]

BY ORDER OF THE COURT

EXHIBIT G

Galen T. Shimoda (Cal. State Bar No. 226752)
Justin P. Rodriguez (Cal. State Bar No. 278275)
Brittany V. Berzin (Cal. State Bar No. 325121)
Shimoda & Rodriguez Law, PC
9401 East Stockton Boulevard, Suite 120
Elk Grove, CA 95624
Telephone: (916) 525-0716
Facsimile: (916) 760-3733

Attorneys for Plaintiff MAURECE MARTIN

SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO

MAURECE MARTIN, individually and on
behalf of all other similarly situated
employees,

Plaintiff,

vs.

WESTERN ENGINEERING
CONTRACTORS, INC., a California
Corporation; and DOES 1 to 100, inclusive,

Defendants.

Case No. 34-2023-00334816

*Assigned for All Purposes to Hon. Jill Talley,
Department 23*

CLASS ACTION

**[PROPOSED] ORDER GRANTING
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT**

Reservation No. A-334816-001

Date: March 29, 2024

Time: 9:00 a.m.

Dept.: 23

Judge: Hon. Jill Talley

Filed: February 15, 2023

FAC Filed: May 25, 2023

Trial Date: None set

1 TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:

2 The Motion for Preliminary Approval of Class Action and PAGA Settlement ("Motion") in the
3 above referenced case came before this Court, on March 29, 2024 at 9:00 a.m., in Department 23
4 before the Honorable Jill Talley, presiding. Named Plaintiff Maurece Martin ("Plaintiff") filed this
5 putative class action on February 15, 2023. The proposed operative Complaint¹ alleges that Defendant
6 Western Engineering Contractors, Inc. ("Defendant") failed to pay overtime, failed to pay minimum
7 wages, failed to accurately record and pay for all hours worked, failed to incorporate the value of
8 prevailing wage rates into employees' paid sick leave and regular rates of pay for purposes of
9 calculating overtime wages on non-prevailing wage jobs, failed to provide meal and rest periods or
10 pay premiums in lieu thereof, failed to provide accurate wage statements, failed to timely pay final
11 wages, failed to reimburse expenses, failed to pay accrued vacation, and unfairly competed against
12 other businesses. Plaintiff has also alleged Defendant is liable for a civil penalties under the Private
13 Attorney's General Act ("PAGA") based on these violations. Plaintiff sought attorneys' fees and costs
14 as part of this Action. Defendant denied all of Plaintiff's claims and denied that this case was
15 appropriate for class treatment. No class has been certified.

16 The parties have agreed to settle the class and PAGA claims. Defendant will provide monetary
17 consideration in exchange for a release of claims consistent with the terms of the proposed settlement
18 as set forth in the Joint Stipulation Regarding Class Action and PAGA Settlement and Release
19 ("Agreement" or "Settlement"). Any capitalized terms herein shall have the same meaning as set forth
20 in the Agreement. The Court, having received and considered Plaintiff's Motion for Preliminary
21 Approval of Class Action and PAGA Settlement, the declarations in support, the Agreement, the
22 proposed Notice of Settlement, and other evidence, HEREBY ORDERS AND MAKES
23 DETERMINATIONS AS FOLLOWS:

24 **I. PRELIMINARILY CERTIFYING A SETTLEMENT CLASS; APPOINTMENT OF**
25 **CLASS REPRESENTATIVES; APPOINTMENT OF CLASS COUNSEL**

26 The Court finds that certification of the following class for settlement purposes only is
27 appropriate under the California Code of Civil Procedure and related case law:

28

¹ Plaintiff submitted a stipulation and order to file a Second Amended Complaint on February 12, 2024.

1 all non-exempt, hourly employees who have, or continue to, work for
2 Defendant in California, and who did not sign an arbitration agreement
with a class action waiver, from February 15, 2019 up to October 8, 2023.

3 The Court recognizes that the foregoing definition is for Class Member identification purposes
4 only and is not intended to capture the claims at issue or limit or alter the released claims under the
5 Agreement.

6 The Court finds that Class Members meet the ascertainability and numerosity requirements since
7 the parties can identify with a matter of certainty, based on payroll records, individuals who fall within
8 the definition and the number of Class Members would make joinder impractical. The commonality and
9 predominance requirements are met for settlement purposes since there are questions of law and fact
10 common to Class Members. The common questions of law or fact in this case all stem from Plaintiff's
11 contentions that Defendant caused the violations outlined above by 1) failing to accurately record and
12 maintain employees' hours worked; 2) failing to pay for all hours worked, including travel time,
13 overtime and minimum wages; 3) failing to authorize and permit putative class members to take all meal
14 and rest periods; 4) failing to include the inclusive dates of the pay period and employees' last 4 digits of
15 their social security number or employee identification number on wage statements issued to putative
16 class members; 5) failing to incorporate the value of prevailing wage rates into employees' paid sick
17 leave and regular rates of pay for the purpose of calculating overtime wages on non-prevailing wage
18 jobs; 6) failing to reimburse the use of personal cell phones and vehicles; and 7) failing to pay accrued
19 and unused vacation pay at all or at an employee's final regular rate of pay at the time of separation.
20 The PAGA, waiting time penalty, and unfair competition claims also derive from these violations.
21 Additionally, Class Members seek the same remedies under state law. The typicality requirement for
22 settlement purposes is also satisfied since the claims of the Class Representative are based on the same
23 facts and legal theories as those applicable to the class members.

24 The Court also finds that preliminarily and conditionally certifying the settlement class is
25 required to avoid each Class Member from litigating similar claims individually. This Settlement will
26 achieve economies of scale for Class Members with relatively small individual claims and conserve the
27 resources of the judicial system.

1 The Court finds that Plaintiff Maurece Martin and Plaintiff's counsel, Galen T. Shimoda
2 Justin P. Rodriguez and Brittany V. Berzin of Shimoda & Rodriguez Law, PC, to be adequate
3 representatives of the settlement class. The Court appoints them as Class Representative and Class
4 Counsel, respectively.

5 **II. PRELIMINARILY APPROVING CLASS ACTION AND PAGA SETTLEMENT**

6 The Court has reviewed the Agreement, which was submitted with Plaintiff's Motion as Exhibit
7 A. The Court finds, on a preliminary and conditional basis, that the Settlement is fair, reasonable, and
8 adequate and falls within the range of reasonableness of a settlement that could ultimately be given final
9 approval by this Court. The Court finds the Settlement was agreed upon only after extensive
10 investigation, litigation, and arms-length negotiations by counsel experienced in complex litigation, who
11 took reasonable steps and measures to weigh the potential value of the disputed claims against the risks
12 of continued litigation. The Court also acknowledges that Class Members may present any objections to
13 the Settlement at a fairness hearing approved by this Court or opt-out of being bound by the
14 preliminarily approved Agreement. The Court preliminarily approves the Agreement and all terms
15 therein as if stated here in full, including the \$417,500 Gross Settlement Amount.

16 The Court approves of Apex Class Action acting as the Settlement Administrator in this case and
17 hereby appoints them to fulfill those duties as outlined in the Agreement.

18 The Court finds that an award of fees under the common fund doctrine may be appropriate in this
19 case because there is a sufficiently identifiable class of beneficiaries (*i.e.* Class Members), the benefits
20 that Plaintiff and Class Counsel were able to negotiate on behalf of Class Members can be accurately
21 traced as set forth in the Agreement, and the fee can be shifted with exactitude to those benefiting as the
22 fee request is a specific, lump-sum percentage of the Gross Settlement Amount. *See Laffitte v. Robert*
23 *Half Internat., Inc.*, 1 Cal.5th 480, 506 (2016); *Paul, Johnson, Alston & Hunt v. Grauly*, 886 F.2d 268,
24 271 (9th Cir. 1989); *Boeing Co. v. Van Gemert*, 444 U.S. 472, 477-478 (1980) (“A lawyer who recovers
25 a common fund for the benefit of persons other than . . . her client is entitled to a reasonable attorney’s
26 fee from the fund as a whole.”). The amounts allocated under the Agreement for attorney’s fees and
27 costs, for an Enhancement Payment to the Class Representative, and Settlement Administrator Costs
28 shall be included in the Notice of Settlement to enable Class Members to review and comment thereon.

1 The Court will consider the reaction of Class Members when evaluating the reasonableness of the
2 requested amounts at final approval. *See In re Heritage Bond Litig.*, 2005 U.S. Dist. LEXIS 13555, 71
3 (C.D. Cal. 2005) (“the absence of objections or disapproval by class members to class counsel’s fee
4 request further supports finding the fee request reasonable”). Plaintiff and Class Counsel are directed to
5 provide information in connection with the motion for final approval that will enable the Court to assess
6 the appropriateness of any requested fee percentage, to perform a lodestar cross check of the requested
7 fee percentage, and to quantify the amount of time spent by Plaintiff on this case and any further risks
8 and/or burdens incurred as a result of acting as Class Representative. Class Counsel is also directed to
9 provide an updated declaration and itemization regarding actual litigation costs incurred. The
10 Settlement Administrator shall also submit a declaration attesting to Settlement Administrator Costs
11 incurred. The Court will review these amounts and allocations in connection with the final approval
12 hearing. To the extent the Court ultimately awards less than the amounts allocated under the Agreement
13 for attorney’s fees and costs, for an Enhancement Payment to the Class Representative, and/or
14 Settlement Administrator Costs, the difference between the amounts awarded and the amounts requested
15 shall be added to the Net Settlement Amount for distribution to Participating Class Members pro rata as
16 set forth in the Agreement.

17 The Court approves of the \$41,750 PAGA Payment, which shall be paid from the Gross
18 Settlement Amount, not in addition to the Gross Settlement Amount, to resolve the alleged PAGA
19 claims. Seventy-Five percent (75%) of the PAGA Payment will be paid to the Labor and Workforce
20 Development Agency (“LWDA”) and Twenty-Five percent (25%) will be paid to Aggrieved Employees
21 on a pro rata basis as described in the Agreement. The Court also finds that the Agreement provides a
22 recovery that creates an effective, substantial deterrent to any potential future non-compliance,
23 furthering the purpose of the Labor Code and LWDA.

24 The Court approves of the identified *cy pres* beneficiaries and distribution plan wherein any
25 checks issued to Participating Class Members and/or Aggrieved Employees that are not cashed by the
26 deadline to do so shall be donated to Sacramento Food Bank and Family Services. *See In re Microsoft I-*
27 *V Cases*, 135 Cal.App.4th 706, 718 (2006). No portion of the Gross Settlement Amount will revert to
28 Defendant for any reason.

1 The releases and waivers for Class Members who do not opt out of being bound by the
2 Agreement (*i.e.* Participating Class Members), Aggrieved Employees, and the Class Representative are
3 also approved by the Court as set forth in the Agreement.

4 **III. APPROVAL OF THE DISTRIBUTION METHOD OF NOTICE TO THE CLASS,**
5 **INCLUDING THE NOTICE OF SETTLEMENT**

6 The Court finds that the proposed Notice of Settlement, attached to this Order as Exhibit 1 and
7 incorporated by reference, fairly and adequately advises Class Members of the terms of the Agreement,
8 the rights being waived, their right to opt out, the ability to dispute the number of workweeks worked
9 during the Class Period, their pro rata share of the Net Settlement Amount, how to participate in the
10 settlement, how to file documentation in opposition to the proposed settlement, and when to appear at
11 the fairness hearing to be conducted on the date set forth below. The Court further finds that the Notice
12 of Settlement and proposed distribution of such notice by first class mail to each identified Class
13 Member at his or her most recent address based on a National Change of Address database search from
14 the Class Members' last known address and a skip trace on any Class Members who have the Notice of
15 Settlement returned as "undeliverable" or "not at this address" comports with all constitutional
16 requirements, including those of due process.

17 The Court also finds that because there is a strong interest in providing Class Members the
18 opportunity to participate in the settlement, along with the Parties' efforts to minimize any intrusion to
19 privacy rights, the sharing of employment information, including social security numbers, is not a
20 serious intrusion on their privacy rights. Hence, the Court orders Defendant to provide Class Member
21 information to the Settlement Administrator as set forth in the Agreement, including the name, last
22 known mailing address, last known telephone number, Social Security Number, weeks Class Members
23 worked during the Class Period, weeks Aggrieved Employees worked during the PAGA Claim Period
24 and any other information the Settlement Administrator needs to effectuate notice to Class Members and
25 Aggrieved Employees. The Class Member information will be provided to the Settlement Administrator
26 only, and not to Plaintiff or Class Counsel, in order to process this settlement as contemplated within the
27 Agreement and approved by this Order. The Settlement Administrator shall only use this information
28

for the purposes identified in the Agreement and shall keep this information confidential consistent with the terms of the Agreement.

IV. IMPLEMENTATION SCHEDULE

Accordingly, with good cause shown, the Court hereby approves and orders that the following implementation schedule be adhered to:

Last day for Defendant to provide Settlement Administrator with Class Member and Aggrieved Employee information	Within 14 calendar days after the Preliminary Approval Date
Last day for Settlement Administrator to complete NCOA search, update Class Member and Aggrieved Employee mailing information, and mail Notice of Settlement	Within 14 calendar days after the Settlement Administrators' receipt of Class Members' information from Defendant
Last day for Class Members to opt-out, submit disputes, submit objections, and submit data requests	60 calendar days after mailing of Notice of Settlement or within 10 days after Notice of Settlement is re-mailed, whichever is later
Last day for Settlement Administrator to provide Parties with signed declaration reporting on settlement administration statistics	Within 14 calendar days after end of the Notice Period
Last day for Settlement Administrator to calculate the final Net Settlement Amount, the final Individual Settlement Amounts for Participating Class Members and/or Aggrieved Employees, any applicable taxes thereon, and report the results of these calculations to Class Counsel and Defendant's Counsel	Within 7 calendar days after the Effective Date
Last day for Defendant to fund settlement	Within 30 calendar days after the Effective Date
Last day for Settlement Administrator to deliver payment of Class Counsel's attorney's fees and costs, Enhancement Payments, PAGA Payment, Settlement Administrator Costs, payment to Participating Class Members, and payment to Aggrieved Employees	Within 7 calendar days after Defendant has funded the settlement

Last day for Participating Class Members and Aggrieved Employees to cash settlement checks	180 calendar days after issuance of checks to Participating Class Members and Aggrieved Employees
Last day for Settlement Administrator to deliver value of uncashed settlement checks to <i>cy pres</i> beneficiaries	Within 14 calendar days after settlement check cashing deadline
Last day for Settlement Administrator to provide Parties with compliance declaration	Within 21 calendar days after settlement check cashing deadline

FINAL APPROVAL AND HEARING

The Court hereby grants Plaintiff's Motion and sets final approval hearing on the proposed date of August 9, 2024, at 9:00 a.m., with briefs and supporting documentation to be submitted according to the California Code of Civil Procedure, in this Department. Participating Class Members who object in a timely manner as set forth in the Agreement, may appear and present such objections at the fairness hearing in person or by counsel.

If for any reason the Court does not grant final approval of the Agreement, all evidence and proceedings held in connection therewith shall be without prejudice to the status quo and rights of the parties to the litigation, including all challenges to personal jurisdiction and to class certification for any purpose other than approving a settlement class. The parties will revert to their respective positions as if no settlement had been reached at all.

IT IS SO ORDERED.

Date: _____

By: _____
Judge of the Superior Court

Exhibit 1

CALIFORNIA SUPERIOR COURT
FOR THE COUNTY OF SACRAMENTO

MAURECE MARTIN, individually and on
behalf of all other similarly situated employees,

Plaintiff,

vs.

WESTERN ENGINEERING CONTRACTORS,
INC., a California Corporation; and DOES 1 to
100, inclusive,

Defendants.

Case No. 34-2023-00334816

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

ATTENTION: all non-exempt, hourly employees who have, or continue to, work for Western Engineering Contractors, Inc. in California, and who did not sign an arbitration agreement with a class action waiver, from February 15, 2019 up to October 8, 2023 (the “Class Members”) and all non-exempt, hourly employees who have, or continue to, work for Western Engineering Contractors, Inc. in California from February 14, 2022 up to October 8, 2023 (“Aggrieved Employees”).

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

You are receiving this notice pursuant to an order from the Sacramento County Superior Court (“Court”) granting Plaintiff’s motion for preliminary approval of a Joint Stipulation Regarding Class Action and PAGA Settlement and Release (“Agreement” or “Settlement”) as fair, reasonable, and adequate. The Settlement was entered into between Plaintiff Maurece Martin (“Plaintiff” or “Class Representative”), and Defendant Western Engineering Contractors, Inc. (“Defendant”) on behalf of Class Members and Aggrieved Employees as defined above. The terms of the Settlement are outlined herein. You are receiving this notice because Defendant’s records indicate you fall within the definition of “Class Member” and/or Aggrieved Employee. Defendant’s records also indicate that you worked [redacted] weeks during the applicable Class Period and/or PAGA period (as defined below), which means your total share of the settlement proceeds is estimated to be [redacted]. Your actual share of the settlement proceeds may 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

On February 15, 2023, Plaintiff filed a Complaint against Defendant in the Sacramento County Superior Court of California on behalf of himself and Class Members. The term “Action” means this putative class action pending in Sacramento County Superior Court, Case No. 34-2023-00334816. The Class Period is from February 15, 2019 up to October 8, 2023 (the “Class Period”). On February 14, 2023, Plaintiff filed a Private Attorneys General Act (“PAGA”) notice with the Labor Workforce Development Agency and, on May 25, 2023, Plaintiff filed a First Amended Complaint adding a cause of action under the Private Attorneys General Act on behalf of himself and Aggrieved Employees. The PAGA Claim Period is from February 14, 2022 up to October 8, 2023 (the “PAGA Claim Period”). Plaintiff filed an amended PAGA notice on December 5, 2023 and filed a Second Amended Complaint on [redacted date].

In the Action, Plaintiff sought to obtain unpaid wages, interest, unpaid expenses, statutory penalties, civil penalties, fees, and costs on behalf of himself, Class Members, and Aggrieved Employees by alleging claims for failure to pay overtime wages, failure to pay minimum wages, meal period violations, rest period violations, wage statement violations, waiting time penalties, failure to provide paid sick leave, unfair competition, violations of the Private Attorneys General Act, failure to reimburse business expenses, and failure

to pay accrued vacation. Plaintiff alleged that Defendant violated California law by 1) failing to accurately record and maintain employees' hours worked; 2) failing to pay for all hours worked, including travel time; 3) failing to authorize and permit putative class members to take all meal and rest periods or to pay premiums in lieu thereof; 4) failing to include the inclusive dates of the pay period and employees' last 4 digits of their social security number or employee identification number on wage statements issued to putative class members; 5) failing to incorporate the value of prevailing wage rates into employees' paid sick leave and regular rates of pay for the purpose of calculating overtime wages on non-prevailing wage jobs; 6) failing to reimburse the use of personal cell phones and vehicles; and 7) failing to pay accrued and unused vacation pay at all or at an employee's final regular rate of pay at the time of separation. 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 settlement. By settling, the Parties will avoid the risks associated with a lengthy litigation process. Despite agreeing to and supporting the Agreement, Defendant continues to deny all allegations and claims. Defendant does not admit any liability to Plaintiff or to any other current or former employees, and Defendant does not admit that any violations of Plaintiff's rights, or the rights of any other current or former employees has occurred. The Court has not made any determination as to whether the claims advanced by Plaintiff have any merit.

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 Agreement applies to any and all Class Members, which are defined as all non-exempt employees who have, or continue to, work for Defendant in California, and who did not sign an arbitration agreement with a class action waiver, from February 15, 2019 up to October 8, 2023. The Agreement also applies to Aggrieved Employees, which are defined as all non-exempt, hourly employees who have, or continue to, work for Defendant in California from February 14, 2022 up to October 8, 2023. 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 Class Members of how they can either participate in the Settlement or be excluded from the Settlement. As set forth below, Aggrieved Employees cannot opt out of this Agreement as it relates to the PAGA Payment or Released PAGA Claims regardless of whether they opt out of being a Class Member. Aggrieved Employees will receive their share of the PAGA Payment regardless of whether they opt out of being a Class Member.

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 and Seventeen Thousand Five Hundred (\$417,500) ("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, attorneys' costs not to exceed \$10,000, Settlement Administrator Costs estimated not to exceed \$10,000, Class Representative's Enhancement Payment of \$10,000, and \$41,750 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 \$41,750 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 based on the number of workweeks worked during the PAGA Claim Period.

The number of weeks you worked during the Class Period and your estimated total share of the Net Settlement Amount and PAGA Payment ("Individual Settlement 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 (*i.e.*, those who do not opt out of the Settlement), 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. Individual Settlement Amounts and Allocation Between Class Members and Aggrieved Employees

Defendant will pay Individual Settlement Amounts through the Settlement Administrator, as described below, to each Participating Class Member and to Aggrieved Employees. All Individual Settlement Amounts will be subject to appropriate taxation. The Parties have agreed, based on the allegations in the Action, that all Individual Settlement 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 Participating Class Members and Aggrieved Employees will not require the submission of a claim form. Each Participating Class Member's share will be determined by dividing their total weeks worked within the Class Period by the total weeks worked by all Participating 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. The PAGA Claim Period is defined as from February 14, 2022 up to October 8, 2023. Defendant's records indicate that you worked [REDACTED] weeks during the applicable PAGA Claim Period, which means your share of the PAGA Payment is estimated to be [REDACTED]. This amount is included in your estimated Individual Settlement Amount stated on the first page of this notice, not in addition to it. You will still receive your share of the PAGA Payment even if you opt out of being a Class Member or do not meet the definition of Class Member. Receipt of the Individual Settlement 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 Settlement Administrator from Defendant's records. Defendant's records will be presumed correct unless evidence to the contrary is provided to the Settlement Administrator. Defendant's records and any additional evidence will be reviewed by the Settlement Administrator in the event of a dispute about the number of workweeks worked by an individual Class Member or Aggrieved Employee. If a Class Member / Aggrieved Employee disputes the accuracy of Defendant's records, all supporting documents evidencing additional workweeks must be submitted by the Class Member or Aggrieved Employee. 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 [REDACTED]. The dispute will be resolved by the Settlement Administrator based on the records and evidence provided.

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 that are alleged in the operative Complaint, and any additional wage and hour claims that could have been brought based on the facts alleged in the operative Complaint, through the Class Period. This release includes but is not limited to claims for (1) failure to pay overtime wages (CA Labor Code §§ 510, 558, 558.1, 1194, 1815 and Wage Order 16, § 3); (2) failure to pay minimum wages (CA Labor Code § 1194, 1194.2, 1197.1 and Wage Order 16 § 4); (3) meal period violations (CA Labor Code §§ 226.7, 512 and Wage Order 16 § 11(A), (B)); (4) rest period violations (CA Labor Code § 226.7 and Wage Order 16 § 12(A)); (5) wage statement penalties (CA Labor Code §§ 226, 226.3, 1174, 1815, 1198 and Wage Order 16, § 6(A)); (6) waiting time penalties (CA Labor Code §§ 201-203, 256); (7) Failure to Provide Paid Sick Leave (CA Labor Code §§ 246, 246.5, 248.5); (8) unfair competition (CA Business & Professions Code § 17200, et seq.); (9) Private Attorneys General Act, (10) Failure to Reimburse for Business Expenses (CA Labor Code § 2802); and (11) Failure to Pay Accrued Vacation (CA Labor Code § 227.3). This release excludes the release of claims not permitted by law. This release will cover all Class Members who do not opt out.

Aggrieved Employees will be deemed to have released any and all claims for civil penalties that were brought under the Private Attorneys General Act, Labor Code §§ 2698 *et seq.*, contained in Plaintiff's operative Complaint, Plaintiff's PAGA letters to the Labor Workforce Development Agency and any additional wage and hour PAGA claims that could have been brought based on the facts alleged in the operative Complaint and PAGA letters during the PAGA Claim Period. This release includes but is not limited to claims for (1) Failure to Pay Overtime Wages (CA Labor Code §§ 510, 1194, 1815; IWC Wage Order 16, § 3); (2) Failure to Pay Minimum Wages (CA Labor Code §§ 1194, 1197.1, IWC Wage Order 16, § 4); (3) Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof (CA Labor Code §§ 226.7, 512 and Wage Order 16, § 11(A), (B)); (4) Failure to Provide Rest Breaks or Pay Premiums in Lieu Thereof (CA Labor Code § 226.7 and IWC Wage Order 16, § 12(A)); (5) Failure to Provide Accurate Wage Statements (CA Labor Code §§ 226, 226.3); (6) Failure to Pay Final Wages (CA Labor Code §§ 201-203, 256); (7) Violation of Provisions Regulating Hours and Days of Work in any Industrial Welfare Commission Order (CA Labor Code §§ 558, 558.1, 1193.6, 2802); (8) Failure to Maintain Accurate Records (CA Labor Code §§ 226.3, 1174, 1815, 1198 and IWC Wage Order 16, § 6(A)); (9) Failure to Provide Paid Sick

Leave (CA Labor Code §§ 246, 246.5, 248.5); (10) Failure to Reimburse for Business Expenses (CA Labor Code § 2802); and (11) Failure to Pay Accrued Vacation (CA Labor Code § 227.3). Aggrieved Employees cannot opt out of this waiver of claims.

The individuals released (“Released Parties”) include Defendant, as well as Defendant’s current and former officers, shareholders, directors, agents, employees, attorneys, and insurers, including but not limited to Don J. Carroll, Theresa W. Carroll, Lyndsey C. Gregory and Josh Wertz

Class Members and/or Aggrieved Employees can talk to the Court-approved Settlement Administrator, Apex Class Action, if they have any questions..

III. WHAT ARE YOUR RIGHTS AS A CLASS MEMBER

A. Participating in the Settlement as a Class Member

If you wish to be a Participating Class Member 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 as a Class Member

The Court will exclude you from the being a Class Member if you request this by [redacted]. If you do not wish to be bound by the Settlement as a Class Member, you may request to be excluded (i.e., “opt out”) by submitting a timely written request to the Settlement 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 want to be excluded from this Settlement; (c) identify the case name and number (i.e. *Martin v. Western Engineering Contractors, Inc.*, 34-2023-00334816); (d) be signed; and (e) be post-marked no later than [redacted]. The request to opt out must be mailed by First Class U.S. Mail, or the equivalent, to:

[admin info]

If you submit a request to opt out which is not postmarked by [redacted], your request to opt out will be rejected, and you will be bound by the release and all other terms of the Agreement. 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 Settlement Administrator, no longer be a Class Member and not received their share of the Net Settlement Amount. 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 Settlement. However, if the Court rejects your objection, you will still be bound by the terms of the Settlement. 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. 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 supporting documentation; (d) identify the case name and number (i.e. *Martin v. Western Engineering Contractors, Inc.*, 34-2023-00334816) (e) be signed; and (f) be post-marked no later than [redacted]. The objection must be sent to the Settlement 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.

You may also appear at the final approval hearing to state your objection. Any Class Member who does not request exclusion may, if the Class Member so desires, enter an appearance through an attorney. If you appear through your own attorney, you are responsible for paying that attorney. You should also file a notice of intent to appear with the Court and serve the notice on counsel for Plaintiff and Defendant.

IV. EFFECT OF THE SETTLEMENT: RELEASED RIGHTS AND CLAIMS

If the Court grants final approval of the Settlement, the Court will make and enter judgment consistent therewith. The judgment, whether favorable or not, will bind all Class Members who do not request exclusion. After final approval, each and every Class Member who does not opt out of the Settlement and each and every Aggrieved Employee, will release Defendant and the Released Parties from the Released Class Claims and the Released PAGA 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 these releases 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 27, 720 9th Street Sacramento, California 95814, on [redacted] at [redacted] to determine whether the Agreement should be finally approved as fair, reasonable and adequate. To join by Zoom link: <https://saccourt-ca.gov.zoomgov.com/my/sscdept27>. To join by phone: (833) 568-8864 / ID: 16120204632. The Court also will be asked to approve Class Counsel's request for attorneys' fees and costs, the Settlement Administrator Costs, and the Class Representative's Enhancement Payment. The hearing may be continued without further notice. It is not necessary for you to appear at this hearing.

VI. SETTLEMENT CHECKS

Settlement checks will be null and void 180 days after issuance if not deposited or cashed. Any check not negotiated within 180 days of issuance shall be distributed to Sacramento Food Bank and Family Services. If your check is lost or misplaced, you should contact the Settlement Administrator immediately to request a replacement.

VII. ADDITIONAL INFORMATION

You may access the Complaint, Class Counsel's motion for preliminary approval, the Agreement, and any other documents required by the Court at the Settlement Administrator's website: [admin web address]. If final approval is granted, a notice of entry of order and copy of the order will be available on the Court's Public Case Access website: <https://services.saccourt.ca.gov/PublicCaseAccess/>. You can also 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
On behalf of Plaintiff

Carrie E. Bushman
Cook Brown LLP
2407 J Street Second Floor
Sacramento, CA 95816
Telephone: 916-442-3100
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 [number]

BY ORDER OF THE COURT

1 Galen T. Shimoda (Cal. State Bar No. 226752)
Justin P. Rodriguez (Cal. State Bar No. 278275)
2 Brittany V. Berzin (Cal. State Bar No. 325121)
Shimoda & Rodriguez Law, PC
3 9401 East Stockton Boulevard, Suite 120
Elk Grove, CA 95624
4 Telephone: (916) 525-0716
Facsimile: (916) 760-3733

5 Attorneys for Plaintiff MAURECE MARTIN
6
7

8 **SUPERIOR COURT OF CALIFORNIA**
9 **FOR THE COUNTY OF SACRAMENTO**
10

11 MAURECE MARTIN, individually and on
12 behalf of all other similarly situated
employees,

13 Plaintiff,

14 vs.
15

16 WESTERN ENGINEERING
CONTRACTORS, INC., a California
17 Corporation; and DOES 1 to 100, inclusive,

18 Defendants.
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Case No. 34-2023-00334816

*Assigned for All Purposes to Hon. Jill Talley,
Department 23*

CLASS ACTION

PROOF OF SERVICE

Reservation No. A-334816-001

Date: March 29, 2024

Time: 9:00 a.m.

Dept.: 23

Judge: Hon. Jill Talley

Filed: February 15, 2023

FAC Filed: May 25, 2023

Trial Date: None set

1 *Martin v. Western Engineering Contractors, Inc.*
2 *Sacramento County Superior Court of California 34-2023-00334816*

3 **PROOF OF SERVICE — CCP §§ 1013a and 2015.5**
4 **and California Rules of Court, Rule 1.21 and Rule 2.150**

5 I, Deanna Morgensen, declare that:

6 I am a citizen of the United States and am over the age of eighteen years and not a party to
7 the within above-entitled action.

8 On March 5, 2024, I served the following documents on the party below:

- 9 • **PLAINTIFF’S NOTICE OF MOTION AND MOTION FOR PRELIMINARY**
10 **APPROVAL OF CLASS ACTION AND PAGAL SETTLEMENT**
- 11 • **MEMORANDUM OF POINTS & AUTHORITIES IN SUPPOR OF**
12 **PLAINTIFF’S MOTION FOR PRELIMINARY APPROVAL OF CLASS**
13 **ACTION AND PAGA SETTLEMENT**
- 14 • **DECLARATION OF BRITTANY V. BERZIN IN SUPPORT OF PLAINTIFF’S**
15 **MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND**
16 **PAGA SETTLMENT**
- 17 • **DECLARATION OF MAURECE MARTIN IN SUPPORT OF PLAINTIFF’S**
18 **MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND**
19 **PAGA SETTLEMENT**
- 20 • **EXHIBIT LIST AND EXHIBITS IN SUPPORT OF PLAINTIFF’S MOTION**
21 **FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA**
22 **SETTLEMENT**
- 23 • **[PROPOSED] ORDER GRANTING PLAINTIFF’S MOTION FOR**
24 **PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA**
25 **SETTLEMENT**

20 Carrie Bushman (SBN: 186130) 21 Cook Brown LLP 22 2407 J Street, Second Floor 23 Sacramento, California 95816 24 Phone: (916) 442-3100 25 Email: cbushman@cookbrown.com 26 ljohnston@cookbrown.com	
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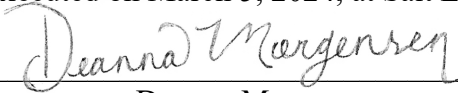
27 [] [By Certified Mail] I am familiar with my employer’s practice for the collection
28 and processing of correspondence for mailing with the United States Postal
Service and that each day’s mail is deposited with the United States Postal
Service that same day in the ordinary course of business. On the date set forth
above, I served the aforementioned document(s) on the parties in said action by
placing a true copy thereof enclosed in a sealed envelope with postage thereon
fully prepaid, for collection and mailing on this date, following ordinary business
practices, at Elk Grove, California, addressed as set forth above.

1 [] [By Personal Service] By personally delivering a true copy thereof to the office
of the addressee above.

2 [XXX] [By Electronic Mail] I e-mailed the documents(s) to the person(s) shown
3 above. No error was reported by the e-mail service that I used.

4 [] [By Overnight Courier] By causing a true copy and/or original thereof to be
personally delivered via the following overnight courier service:_____.

5
6 I declare under penalty of perjury under the laws of the State of California that the foregoing
is true and correct, and that this declaration was executed on March 5, 2024, at Salt Lake City, Utah.

7 
8 _____
Deanna Morgensen