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**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.

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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

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

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

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

GENERAL ALLEGATIONS

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

16. 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. Similarly situated employees also worked for Defendants during the claim period as hourly, non-exempt employees.

17. Defendants failed to accurately record Plaintiff's and similarly situated 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 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
20 (8) hours per day and/or forty (40) hours per week. *See Cal. Labor Code § 1815.*

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

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

27 28. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees
28 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.

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.

37. Defendants employed Plaintiff and similarly situated employees for periods of more than five (5) hours without providing meal breaks of at least thirty (30) minutes or a second meal period of at least thirty (30) minutes when Plaintiff and similarly situated employees worked more than ten (10) hours in a day. Defendants also failed to allow Plaintiff and similarly situated employees to take their first meal period before the completion of their fifth hour of work and failed to allow Plaintiff and similarly situated employees to take their second meal period before the completion of their tenth hour of work. Plaintiff and similarly situated employees did not waive their rights to all meal periods throughout their employment.

38. Defendants further failed to pay Plaintiff and similarly situated employees the applicable meal period premiums for any such missed meal breaks.

39. 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.

FOURTH CAUSE OF ACTION
REST PERIOD VIOLATIONS
(As to all Defendants)

40. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 39 as though fully set forth herein.

41. An employer must provide an employee a rest period in accordance with the applicable Wage Order and California Labor Code section 226.7.

42. California Labor Code section 226.7 and Wage Order No. 16, section 12(A) require an employer to provide a rest period of not less than ten (10) minutes for each work period of more than four (4) hours or a major fraction thereof.

43. Plaintiff alleges that Defendants failed to authorize and permit Plaintiff and similarly situated employees to take paid rest periods of at least ten (10) minutes for each work period that they worked more than four (4) hours or a major fraction thereof.

44. Defendants further failed to pay Plaintiff and similarly situated employees the applicable rest period premiums for any such missed rest periods.

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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;

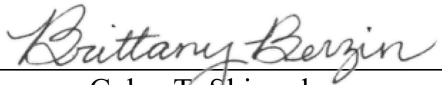
25 10. For such other and further relief as this Court may deem just and proper,
26 including, but not limited to:

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

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

Dated: February 12, 2024

Shimoda & Rodriguez Law, PC

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

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, Miriam Tapia, 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 6, 2024, I served the following documents on the party below:

9 • **SECOND AMENDED CLASS ACTION COMPLAINT**

10 Carrie Bushman (SBN: 186130) 11 Cook Brown LLP 12 2407 J Street, Second Floor 13 Sacramento, California 95816 14 Phone: (916) 442-3100 Email: cbushman@cookbrown.com ljohnston@cookbrown.com	
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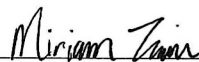
15 [] [By Certified Mail] I am familiar with my employer's practice for the collection
16 and processing of correspondence for mailing with the United States Postal
17 Service and that each day's mail is deposited with the United States Postal
18 Service that same day in the ordinary course of business. 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 Salt Lake City, Utah, addressed as set forth above.

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

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

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

24 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 6, 2024, at Salt Lake City, Utah.

25 

26 Miriam Tapia
27
28