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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

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

CLASS ACTION

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

Date: August 9, 2024

Time: 9:00 a.m.

Dept.: 23

Judge: Hon. Jill Talley

Filed: February 15, 2023

FAC Filed: May 25, 2023

SAC Filed: March 6, 2024

Trial Date: None set

1 TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

2 PLEASE TAKE NOTICE that on August 9, 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. Certifying the proposed class herein for purposes of settlement;
- 7 2. Appointing Plaintiff Maurece Martin as class representative for purposes of settlement;
- 8 3. Appointing Shimoda & Rodriguez Law, PC, as Class Counsel for purposes of settlement;
- 9 4. Approving the proposed class action and Private Attorney's General Act settlement, in the
10 gross amount of \$417,500, which is incorporated herein by reference;
- 11 5. Approving the application for payment to Class Counsel of attorneys' fees in the amount of
12 \$146,125;
- 13 6. Approving the application for payment to Class Counsel of reasonable costs in the amount of
14 \$6,976.71;
- 15 7. Approving the Class Representative Enhancement Payment of \$10,000 to Plaintiff Maurece
16 Martin;
- 17 8. Approving the appointment of Apex Class Action as the Settlement Administrator and for
18 payment to Apex Class Action for administering said class action settlement in the amount of
19 \$5,900;
- 20 9. Approving the settlement of claims under the Private Attorneys General Act for the total
21 amount of \$41,750.00, 75% of which will be paid to the Labor and Workforce Development
22 Agency and 25% of which will be paid to Aggrieved Employees;
- 23 10. Determining that the class notification procedure and process complied with Class Members'
24 due process rights;
- 25 11. Directing that any amount from settlement checks that were not cashed by the check cashing
26 deadline be donated to Sacramento Food Bank and Family Services under the doctrine of *cy*
27 *pres*;

1 12. Approving and adopting the Proposed Order and its implementation schedule, which is filed
2 herewith and incorporated by reference.

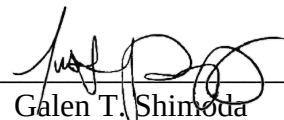
3 This Motion is being made pursuant to Code of Civil Procedure section 382, Labor Code section
4 2699(l), and California Rules of Court 3.769 and 3.764, on the grounds that the preliminarily approved
5 class action and Private Attorneys General Act settlement is fair, reasonable, and adequate as to all Class
6 Members and should be approved by the Court. This motion will be based on the notice of motion,
7 memorandum of points and authorities, the Declaration of Justin P. Rodriguez, the Declaration of
8 Maurece Martin, the Declaration of Madely Nava, exhibits, the record and files of this case, and any
9 further oral or documentary evidence introduced at the hearing of this motion.

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

17 Dated: July 12, 2024

Shimoda & Rodriguez Law, PC

18 By: _____

19 
20 Galen T. Shimoda
21 Justin P. Rodriguez
22 Renald Konini
23 Attorneys for Plaintiff

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CLASS ACTION

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

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1 **I. INTRODUCTION AND OPENING SUMMARY OF ARGUMENT**

2 Plaintiff Maurece Martin (“Plaintiff”) seeks final approval of a wage and hour class action and
3 Private Attorneys General Act (“PAGA”) settlement in the gross amount of \$417,500. *See generally*
4 Exhibit A (Joint Stipulation Regarding Class Action and PAGA Settlement and Release [“Agreement”]).
5 Plaintiff brought this class action individually and on behalf of similarly situated employees who worked
6 for Defendant Western Engineering Contractors, Inc. (“Defendant”) (Plaintiff and Defendant sometimes
7 collectively referred to as the “Parties”). *See generally* Exhibit B (Plaintiff’s Operative Complaint).
8 There are approximately 91 Class Members.

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

1 knowledge of the issues in this case. *See* Decl. Rodriguez, ¶¶ 5, 6-7, 9-10.

2 The reaction of Class Members to the preliminarily approved Agreement has been
3 overwhelmingly positive and gives substantial support to the Agreement and all terms and allocations
4 therein being fair, reasonable, and adequate. Only one (1) Class Member opted out of the settlement
5 and there have been zero objections to the Agreement. *See* Declaration of Madely Nava (“Decl.
6 Nava”), ¶¶ 11-12. It is well within the discretion of this Court to grant final approval of the proposed
7 settlement, which satisfies all applicable criteria under California law. Accordingly, Plaintiff requests
8 that the Court: (1) certify the settlement class; (2) grant final approval of the Agreement; (3) find that
9 the procedures used to notify Class Members complied with due process; (4) Grant Plaintiff’s request
10 for attorney’s fees and costs, the Enhancement payment to the Class Representative, and Settlement
11 Administrator Costs; and (5) approve and adopt the proposed order granting final approval, which is
12 filed concurrently herewith.

13 **II. PROCEDURAL AND LITIGATION HISTORY**

14 Plaintiff filed a class action complaint on approximately February 15, 2023, in the Sacramento
15 County Superior Court against Defendant. Plaintiff exhausted administrative remedies under the
16 PAGA by providing notice of the claims and violations to the LWDA. *See* Exhibit C; Cal. Lab. Code §
17 2699.3(a), (c); Decl. Rodriguez, ¶ 3. Plaintiff filed a First Amended Class Action Complaint on
18 approximately May 25, 2023 to include a PAGA claim. *See id.* Plaintiff filed a Second Amended
19 Complaint on March 6, 2024, to match the scope of the resolution reached by the Parties, adding claims
20 for unpaid travel time, failure to reimburse expenses and failure to pay accrued vacation. *See* Exhibit
21 B. There is no date set for a motion for certification or trial in this matter. *See* Decl. Rodriguez, ¶ 4.

22 **III. INVESTIGATION AND DISCOVERY CONDUCTED**

23 Plaintiff thoroughly investigated issues affecting certification, the merits of the class claims, and
24 potential damages for such claims. *See* Decl. Rodriguez, ¶¶ 7, 9. Plaintiff worked during the time all of
25 Defendant’s policies and practices at issue in the Complaint were in effect and provided information
26 regarding these policies and practices, enabling pre-filing investigations to take place. *See* Declaration
27 of Maurece Martin (“Decl. Martin”) ¶¶ 2, 5-6. The Parties engaged in informal discovery and
28 exchange of documents, including a representative sampling of employee data, such as timecards,

1 paystubs, payroll data, and relevant policies for the entirety of the statute of limitations applicable to the
2 asserted claims. The discovery covered all aspects of the asserted claims, including certification issues,
3 merits issues, damages, the scope and configuration of Class Members, the content and implementation
4 of the wage and hour policies at issue, issues relating to manageability concerns at trial, among other
5 relevant areas. *See* Decl. Rodriguez, ¶ 7. The information allowed Plaintiff to determine the extent and
6 frequency of any violations in accordance with Plaintiff's contentions and create an accurate damages
7 model to assess the reasonableness of any settlement. *See id.*

8 **IV. NEGOTIATION AND PROPOSED SETTLEMENT**

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

10 The final settlement occurred only after extended, arm's length negotiations. Over the course of
11 approximately eight months, Plaintiff has been investigating the claims and discussing with
12 Defendant's counsel the merits of the claims and issues present in this case. *See id.* at ¶¶ 6-10. The
13 Parties exchanged substantial amounts of information and legal analysis in connection with these
14 discussions. *See id.* It was only after these extended discussions, which included a full day mediation
15 with Russ J. Wunderli, Esq., that the Parties were able resolve all claims and enter into the Agreement.
16 *See id.* at ¶ 8.

17 **b. The Terms of the Agreement**

18 1. The following groups of individuals are covered by the Agreement: (a) Class Members,
19 which include all non-exempt, hourly employees who have, or continue to, work for Defendants in
20 California, and who did not sign an arbitration agreement with a class action waiver, from February 15,
21 2019, up to October 8, 2023; and (b) Aggrieved Employees, which include all non-exempt, hourly
22 employees who have, or continue to, work for Defendant in California from February 14, 2022, up to
23 October 8, 2023. *See* Exhibit A, ¶¶ 1.2, 1.5. There are approximately 91 Class Members.

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

28 3. Up to \$10,000 will be paid to Plaintiff as an Enhancement Payment. This amount will

1 be in addition to any amount Plaintiff may be entitled to under the terms of the Agreement. *See id.* at ¶
2 5.4.

3 4. The Court preliminarily approved Apex Class Action to act as the Settlement
4 Administrator, whose final costs are \$5,900. The difference between the actual administration costs
5 and the originally allocated \$10,000 under the Agreement, will be added to the Net Settlement Amount
6 and paid to Class Members on a pro rata basis. *See* Exhibit A, ¶ 5.3; Decl. Rodriguez, ¶ 25.

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

6. The Parties agree that up to thirty-five percent (35%) of the Gross Settlement Amount (\$146,125) will be paid for Plaintiff's attorneys' fees incurred in the litigation of this case. Defendant will not oppose any application for attorneys' fees so long as it is within this threshold. *See id.* at ¶ 5.2. Additionally, the Parties agree that Plaintiff will be entitled to the actual litigation costs in the amount of \$6,976.71. *See Exhibit D (Plaintiff's Counsel's Itemized Costs)*. The difference between the actual costs and the originally allocated \$10,000 will be redistributed to Class Members on a pro rata basis. *See Exhibit A, ¶ 5.2.*

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

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

1 9. For any portion of the Net Settlement Amount or PAGA Payment allocated to
2 Participating Class Members and/or Aggrieved Employees that is not claimed by them by cashing their
3 respective settlement checks within 180 calendar days of issuance, that remaining amount shall be
4 donated to Sacramento Food Bank and Family Services under the doctrine of *cy pres*. See Exhibit A, at
5 ¶ 5.6. Because the Agreement provides for all funds such that there is no residue, the provisions of
6 California Civil Procedure Code section 384 are inapplicable. See *In re Microsoft I-V Cases*, 135
7 Cal.App.4th 706, 718, 720 (2006).

8 **c. Allocation of Settlement Funds**

9 Payment to Participating Class Members and Aggrieved Employees will not require the
10 submission of a claim form. A Net Settlement Amount will be determined by subtracting from the
11 Gross Settlement Amount any attorneys' fees and costs, Enhancement Payment to the Class
12 Representative, Settlement Administrator Costs, and PAGA Payment that are approved and/or awarded
13 by the Court. Each Class Member's share will be determined by dividing their total weeks worked
14 within the Class Period by the total weeks worked by all Class Members within the Class Period. That
15 fraction will then be multiplied by the Net Settlement Amount to arrive at the Class Member's
16 individual share of the Net Settlement Amount. Each Aggrieved Employee's share of the 25% portion
17 of the PAGA Payment will be determined by dividing their total weeks worked within the PAGA
18 Claim Period by the total weeks worked by all Aggrieved Employees within the PAGA Claim Period.
19 That fraction will then be multiplied by the 25% portion of the PAGA Payment to arrive at the
20 Aggrieved Employee's individual share. See Exhibit A, at ¶¶ 1.17, 5.5, 5.8.

21 **V. PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT AND THE**
22 **SUBSEQUENT CLASS ACTION ADMINISTRATION**

23 Plaintiff's motion for preliminary approval of the class action settlement was approved by the
24 Court, in its entirety, on April 11, 2024. To comply with the class members' due process rights, the
25 parties enlisted an exhaustive method to ensure the best practical means possible was used to provide
26 notice to the class. The parties provided the class action administrator the names, last known address,
27 and social security numbers for the class. The class action administrator then updated this information
28 by doing an address trace for each individual using this information. See Decl. Nava, ¶¶ 5-6. If the

1 Notice Packets were returned as undeliverable, further investigation was performed and they were re-
2 mailed using updated information. *See id.* at ¶ 8. Of the 186 Notice Packets mailed, only 4 were
3 undeliverable after use of these methods. *See id.* at ¶¶ 7-10. The Notice Packets included information
4 regarding the requested attorneys' fees, costs, Enhancement Payment, payment to the LWDA,
5 administration costs, and tax allocations. *See* Exh. A to Decl. Nava. The average distribution to
6 participating class members is approximately \$2,297.20, the maximum distribution is approximately
7 \$11,401.99. *See* Decl. Nava, ¶ 15. No objections to the preliminarily approved settlement have been
8 made and only one (1) Class Member opted out. *See id.* at ¶¶ 11-12.

9 It is not required that Class Members be given actual notice of a class settlement; instead, the
10 best practicable notice under the circumstances is all that is required. *See Silber v. Mabon*, 18 F.3d
11 1449, 1453 (9th Cir. 1994); *Briseno v. ConAgra Foods, Inc.*, 844 F.3d 1121, 1129 (9th Cir. 2017);
12 *Walsh v. CorePower Yoga LLC*, 2017 U.S. Dist. LEXIS 163991, at *12-14 (N.D. Cal. 2017); *Wright v.*
13 *Linkus Enters.*, 259 F.R.D. 468, 474-75 (E.D. Cal. 2009). In *Silber v. Mabon*, 18 F.3d 1449 (9th Cir.
14 1994), the Court rejected a class member's argument that he had not received due process because he
15 did not receive notice until after the opt out period, finding that, so long as the notice process utilized is
16 the best practicable under the circumstances, due process is satisfied even if there is no actual receipt of
17 the notice. *See Silber*, 18 F.3d at 1453-1454. A similar finding was made in *Briseno v. Conagra*
18 *Foods, Inc.*, 844 F.3d 1121 (9th Cir. 2017). With regard to any undeliverable Notice in this case, the
19 Court in *Rannis v. Recchia*, 380 F. App'x 646 (9th Cir. 2010) found that class members who did not
20 receive actual notice due to their mailings being deemed undeliverable were still properly held to be
21 part of the class settlement because they received the best notice practicable under the circumstances.
22 *See Rannis v. Recchia*, 380 F. App'x at 650-651. In *Noel v. Thrifty Payless, Inc.*, 7 Cal.5th 955, 980-
23 984 (2019), the California Supreme Court noted that California has adopted a similar approach
24 regarding providing notice to class members.

25 The notice method in *Rannis* is similar to that used in the present case. For example, the Notice
26 contains all information necessary for a Class Member to assess the litigation, the settlement, and whether
27 they wanted to participate, object, or opt-out. *See* Exh. A to Decl. Nava. The Settlement Administrator
28 utilized a national change of address database, forwarding notices, and skip tracing in an effort to ensure

that all reasonable means were exhausted in attempting to provide Class Members notice of this settlement. *See* Decl. Nava, ¶¶ 6-9. Additionally, the entire motion for preliminary approval, the Notice, and all filings in this matter were available, free of charge, on a web page accessible to all Class Members and identified on the class notice. *See* Exh. A to Dec. Nava, pg. 4. The content of the notice and the manner in which it was provided to Class Members was the best practicable notice to satisfy due process.

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

A class action may not be dismissed, compromised, or settled without Court approval and the decision to approve or reject a settlement is committed to the Court’s sound discretion. *See* Cal. Rules of Court, Rule 3.769; Fed. R. Civ. Proc., Rule 23(e)¹; *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 234-35 (2001); *see also* Cal. Lab. Code §§ 2699(l)(2). However, “[d]ue regard should be given to what is otherwise a private consensual agreement between the parties. The inquiry ‘must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.’” *See Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1801 (1996); *see also Cellphone Termination Fee Cases*, 180 Cal. App. 4th 1110, 1118 (2009); *In re Microsoft I-V Cases*, 135 Cal. App. 4th 706, 723 (2006); *Nordstrom Com. Cases*, 186 Cal. App. 4th 576, 581 (2010). The law favors settlement of lawsuits, particularly class actions and other complex cases where substantial resources can be conserved by avoiding the time, expense, and rigors of formal litigation. *See Cellphone Termination Fee Cases*, 180 Cal. App. 4th 1110, 1117-1118 (2009); *In re Microsoft I-V Cases*, 135 Cal. App. 4th 706, 723 n.14 (2006); *Nordstrom Com. Cases*, 186 Cal. App. 4th 576, 581 (2010); *see also Neary v. Regents of Univ. of Cal.*, 3 Cal. 4th 273, 277-81 (1992).

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

The purpose of the Court’s final evaluation of a proposed class action settlement is to determine only whether it is within the range of reasonableness. *See Wershba*, 91 Cal. App. 4th at 234-35. If the Court finds a proposed settlement falls within “the range of reasonableness,” it should grant final

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 approval of the class action settlement. *See, e.g., North County Contr.'s Assn., Inc. v. Touchstone Ins.*
2 *Svcs.*, 27 Cal. App. 4th 1085, 1089-90 (1994); *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th
3 116, 133 (2008). Factors to consider in determining whether the settlement is fair, reasonable, and
4 adequate include the strength of the Plaintiff's case, the risk, expense, complexity and likely duration of
5 further litigation, the risk of maintaining class action status through trial, the amount offered in
6 settlement, the extent of discovery completed and the stage of the proceedings, the experience and
7 views of counsel, the presence of a governmental participant, and the reaction of the class members to
8 the proposed settlement. *See Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1801 (1996). However,
9 this Court should begin its analysis with a presumption that the proposed settlement is fair. "A
10 presumption of fairness exists where: (1) the settlement is reached through arm's length bargaining; (2)
11 investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel
12 is experienced in similar litigation; and (4) the percentage of objectors is small." *Id.* at 1802; *see also*
13 *In re Heritage Bond Litig.*, 2005 WL 1594403, at *10 (C.D. Cal. June 10, 2005) ("It is established that
14 the absence of a large number of objectors to a proposed class action settlement raises a strong
15 presumption that the terms of a proposed class settlement action are favorable to the class members").

16 **i. The Agreement is a Result of Extensive, Non-Collusive Arm's Length**
17 **Negotiations Between the Parties**

18 Settlement of this case was reached only after substantial litigation and extensive arm's length
19 negotiations lasting nearly eight months, which included a full day mediation. *See* Decl. Rodriguez, ¶¶
20 6-10. At all times, the negotiations were adversarial, although still professional in nature. *See id.*

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

23 The Parties were in possession of all necessary information during the negotiations. The Parties
24 engaged in substantial informal discovery, which included all necessary components for evaluating the
25 class claims and creating an accurate damages model. *See id.* at ¶¶ 6-10. Plaintiff was in possession of
26 this information prior to calculating any damages in this case. *See id.* As a result, Plaintiff was able to
27 make a reasonable estimation of Defendant's potential liability. *See id.* For these reasons, the
28 settlement now before the Court was reached at a stage where "the parties certainly have a clear view of

the strengths and weaknesses of their cases” sufficient to support the settlement. *See Boyd v. Bechtel Corp.*, 485 F.Supp. 610, 617 (N.D. Cal. 1979).

iii. Plaintiff’s Counsel are Experienced in Similar Litigation

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

iv. No Class Member Objected and only One (1) Class Member Opted Out

The reaction by Class Members to the Agreement and all the terms and allocations stated therein is overwhelmingly positive. Zero Class Members have objected to any aspect of the Agreement and only one (1) has opted out. *See Decl. Nava*, ¶¶ 11-12. This provides strong evidence that the settlement is fair, reasonable, and adequate. *See In re Heritage Bond Litig.*, 2005 WL 1594403, at *10 (“It is established that the absence of a large number of objectors to a proposed class action settlement raises a strong presumption that the terms of a proposed class settlement action are favorable to the class members”); *Nat’l Rural Telecommunications Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 529 (C.D. Cal. 2004) (“That unanimous, positive reaction to the Proposed Settlement is compelling evidence that the Proposed Settlement is fair, just, reasonable, and adequate”).

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

Plaintiff’s claims and the ability to obtain and maintain certification all the way through trial were disputed by Defendant. *See Decl. Rodriguez*, ¶¶ 5, 6-10. Based on the records and facts of this case, Plaintiff has secured a gross recovery of approximately 8.4% of the maximum value of the claims in this matter and between 13.9% and 38.8% of the more realistic range of recovery. *See Decl. Rodriguez*, ¶¶ 9-10. The net recovery represents approximately 4.2% of the maximum value of the claims in this matter and between 6.9% and 19.2% of the more realistic range of recovery. *See id.* The

1 average net award is approximately \$2,297.20 and the maximum net award is \$11,401.99. *See* Decl.
2 Nava, ¶ 15.

3 This settlement is a reasonable compromise of the class and PAGA claims, and is within the
4 percentile ranges of the total available damages that have been approved in other class settlements. *See*
5 *Wershba*, 91 Cal.App.4th at 246, 250; *Rebney v. Wells Fargo Bank*, 220 Cal.App.3d 1117, 1139
6 (1990); *Officers for Justice v. Civil Serv. Comm’n*, 688 F.2d 615, 628 (9th Cir. 1982); *see also In re*
7 *Omnivision Technologies, Inc.*, 559 F.Supp.2d 1036, 1042 (2007) (noting that certainty of recovery in
8 settlement of 6% of maximum potential recovery after reduction for attorney’s fees was higher than
9 median percentage for recoveries in shareholder class action settlements, averaging 2.2%-3% from
10 2000 through 2002); *Bravo v. Gale Triangle, Inc.*, 2017 U.S. Dist. LEXIS 77714 (C.D. Cal. 2017)
11 (approving a settlement where the net recovery to class members was approximately 7.5% of the
12 projected maximum recovery amount); *Avila v. Cold Spring Granite Co.*, 2017 U.S. Dist. LEXIS
13 130878 (E.D. Cal. 2017) (approving a settlement with a gross recovery of 11% of the projected
14 maximum damages available and a net recovery of approximately 6.7% of the projected maximum
15 recovery); *Bellinghausen v. Tractor Supply Co.*, 306 F.R.D. 245 (N.D. Cal. 2015) (approving a
16 settlement where the gross recovery was approximately 8.5% of the projected maximum recovery);
17 *Schiller v. David’s Bridal, Inc.*, 2012 U.S. Dist. LEXIS 80776 at *48 (E.D. Cal. 2012) (“Class
18 Members will receive an average of approximately \$198.70, with the highest payment to a Class
19 Member being \$695.78 . . . Overall, the Court finds that the results achieved are good, which is
20 highlighted by the fact that there was no objection to the settlement amount or the attorneys’ fees
21 requested.”); *Gardner v. GC Servs., LP*, 2012 U.S. Dist. LEXIS 47043, 18 (S.D. Cal. 2012) (“the
22 results achieved in this case were very favorable. Class members are provided with immediate
23 monetary relief, with an average award of around several hundred dollars and a minimum award of
24 \$50”).

25 **vi. The Proposed Settlement is a Reasonable Compromise of Claims**

26 In *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116 (2008), the Court required additional
27 information be presented in class action settlements “to ensure that the recovery represents a reasonable
28 compromise, given the magnitude and apparent merit of the claims being released, discounted by the

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

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

18 **b. Certification of the Class is Appropriate**

19 Class certification is appropriate when (1) the class is ascertainable and (2) there is “a well-
20 defined community of interest in the questions of law and fact involved affecting the parties to be
21 represented.” *Dunk*, 48 Cal. App. 4th at 1806. The “community of interest” element “embodies three
22 factors: (1) common questions of law or fact predominate; (2) class representatives with claims or
23 defenses typical of the class; and (3) class representatives who can adequately represent the class.” *Id.*
24 Here, the Court conditionally certified the settlement class on April 11, 2024, and nothing has happened
25 in the interim that would warrant changing that decision. See *Garcia v. City of King City*, 2017 WL
26 363257 *4 (N.D. Cal. 2017); *Messineo v. Ocwen Loan Servicing, LLC*, 2017 WL 733219, *4 (N.D. Cal
27 2017). Here, the Parties agree that, for the purposes of settlement, these prerequisites are met. See
28 Exhibit A.

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

2 The proposed settlement class is ascertainable because all putative Class Members can be
3 readily identified through employee personnel and payroll files. *See Noel v. Thrifty Payless, Inc.*, 7
4 Cal.5th 955, 980 (2019); *Rose v. City of Hayward*, 126 Cal.App.3d 926, 932 (1981); *Lee v. Dynamex,*
5 *Inc.*, 166 Cal. App. 4th 1325, 1334 (2008). The numerosity requirement is met because there are 91
6 individuals who fall within the definition of Class Member, 90 of which are Participating Class
7 Members, making joinder of all individuals impracticable. *See Gay v. Waiters' & Dairy Lunchmen's*
8 *Union*, 489 F.Supp. 282 (N.D. Cal. 1980), *aff'd* 694 F.2d 531 (9th Cir. 1982); *Hebbard v. Calgrove*, 28
9 Cal. App. 3d 1017, 1030 (1972) (noting no set minimum to meet the numerosity prerequisite, but a
10 class as few as twenty-eight (28) members is acceptable). Thus, these requirements are satisfied.

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

12 The commonality requirement is met when there are questions of law or fact regarding the class
13 as a whole. *See Hanlon*, 150 F.3d at 1019. Commonality requires only that some common legal or
14 factual questions exist; Plaintiff need not show that all issues in the litigation are identical. *See*
15 *Richmond v. Dart Ind., Inc.*, 29 Cal.3d 462, 473 (1981); *City of San Jose v. Superior Court*, 12 Cal.3d
16 447, 460 (1974). Common questions of law or fact must also predominate over individual questions
17 and class-wide treatment of a dispute must be superior to individual litigation.² *See Richmond*, 29
18 Cal.3d at 469. Predominance requires a putative class be sufficiently cohesive to warrant adjudication
19 by representation. *See Hanlon*, 150 F.3d at 1022. The typicality requirement is met when claims of the
20 named representative are typical of those of the class, though “they need not be substantially identical.”
21 *Id.* at 1020; *Classen v. Weller*, 145 Cal. App. 3d 27, 46-47 (1983).

22 The common questions of law and fact in this case stem from Plaintiff’s contention that
23 Defendant violated California law by 1) failing to accurately record and maintain employees’ hours
24 worked; 2) failing to pay for all hours worked, including travel time; 3) failing to authorize and permit
25 putative class members to take all meal and rest periods; 4) failing to include the inclusive dates of the
26 pay period and employees’ last 4 digits of their social security number or employee identification
27

28 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).

1 number on wage statements issued to putative class members; 5) failing to incorporate the value of
2 prevailing wage rates into employees' paid sick leave and regular rates of pay for the purpose of
3 calculating overtime wages on non-prevailing wage jobs; 6) failing to reimburse the use of personal cell
4 phones and vehicles; and 7) failing to pay accrued and unused vacation pay at all or at an employee's
5 final regular rate of pay at the time of separation. *See* Exhibit B. The waiting time penalties, unfair
6 competition, and PAGA claims are derivative of these violations. *See id.* Plaintiff and the Class
7 Members seek the same remedies under state law. Under these specific circumstances, the
8 commonality and predominance requirements are satisfied. Regarding the typicality requirement,
9 Plaintiff contends he suffered from the same unlawful policies, treatment, and circumstances as Class
10 Members did, will request the same remedies, and will rely on the same methods of proof to establish
11 liability and damages. *See id.* Thus, the typicality requirement is also satisfied for settlement purposes.

12 **iii. The Adequacy Requirement is Met**

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

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

1 **VII. THE AMOUNTS REQUESTED FOR ATTORNEY’S FEES AND COSTS, AN**
2 **ENHANCEMENT PAYMENT TO THE CLASS REPRESENTATIVE, AND**
3 **SETTLEMENT ADMINISTRATOR COSTS ARE REASONABLE AND SHOULD BE**
4 **APPROVED**

5 The Notice of Settlement sent to Class Members specifically identified the allocations for
6 attorney’s fees and costs, the Enhancement Payment, and Settlement Administrator Costs. *See* Exh. A
7 to Decl. Nava. The reaction of Class Members to these requested amounts provides useful evidence of
8 whether they are reasonable. *See In re Heritage Bond Litig.*, 2005 WL 1594403, *21 (“The absence of
9 objections or disapproval by class members to Class Counsel’s fee request further supports finding the
10 fee request reasonable”). As noted above, there were no objections raised to the Agreement or any term
11 or allocation therein whatsoever. *See* Decl. Nava, ¶ 12. In addition to Class Members’ reactions
12 supporting the requested amount, the facts and applicable case law also support awarding these
13 amounts in full.

14 An award of attorney’s fees should include compensation for all hours reasonably spent. *See*
15 *Ketchum v. Moses*, 24 Cal.4th 1122, 1133 (2001); *see also Hensley v. Eckerhart*, 461 U.S. 424, 431
16 (1983) (finding hours are reasonably spent if they are the kind normally billed to a fee-paying client).
17 California has not adopted any “benchmark” percentage utilized by several federal courts. *See Emmons*
18 *v. Quest Diagnostics Clinical Lab’ys, Inc.*, 2017 WL 749018, at *7 (E.D. Cal. 2017) (“Notably, while
19 the California Supreme Court recognized the Ninth Circuit’s 25 percent benchmark for percentage
20 awards in common fund cases, it did not adopt such a benchmark for California cases”). Instead, “[t]he
21 benchmark in determining attorney fees is reasonableness.” *Karton v. Ari Design & Constr., Inc.*, 61
22 Cal.App.5th 734, 744 (2021).

23 **a. A Fee of Thirty-Five Percent of the Common Fund Is Reasonable Because It Is Within**
24 **the Ranges Historically Approved by Courts in Class Settlements and a Lodestar**
25 **Cross Check Validates the Proposed Fee**

26 An award of attorney’s fees under the common fund doctrine is appropriate in this case as there
27 is a sufficiently identifiable class of beneficiaries (*e.g.* the settlement class), the benefits received can be
28 accurately traced to the settlement Plaintiff and Class Counsel were able to negotiate on behalf of Class
Members, and the fee can be shifted with exactitude to those benefiting as the fee request is a specific,
lump-sum percentage of the fund. *See Laffitte v. Robert Half Internat., Inc.*, 1 Cal.5th 480, 506 (2016);

1 *Paul, Johnson, Alston & Hunt v. Gaulty*, 886 F.2d 268, 271 (9th Cir. 1989); *Boeing Co. v. Van*
2 *Gemert*, 444 U.S. 472, 477-478 (1980) (“A lawyer who recovers a common fund for the benefit of
3 persons other than . . . her client is entitled to a reasonable attorney’s fee from the fund as a whole.”).
4 The requested fee, 35% of the common fund, is within ranges awarded in other cases. *See Martin v.*
5 *Ameripride Servs.*, 2011 U.S. Dist. LEXIS 61796, *22-23 (S.D. Cal. 2011) (collecting cases); *Birch v.*
6 *Office Depot, Inc.*, USDC Southern District, Case No. 06cv1690 DMS (WMC) (awarding 40% fee on a
7 \$16 million wage and hour class action settlement); *Rippee v. Boston Mkt. Corp.*, USDC Southern
8 District, Case No. 05cv1359 BTM (JMA) (awarding a 40% fee on a \$3.75 million wage and hour class
9 action settlement).

10 To the extent there may be some Courts that have granted fees at a percentage less than 35%,
11 that does not justify an arbitrary cap on Class Counsel’s fees in this case. First, in many instances, the
12 treatises or cases discussing these percentages are relying on federal decisions guided by a
13 “benchmark” percentage of 25% that has not been adopted by the California Supreme Court. *See*
14 *Emmons*, 2017 WL 749018, at *7. This artificially lowers the average percentage of fees awarded.
15 Second, many of the same decisions and treatises refer to cases that have a substantial gross settlement
16 fund to begin with, which will generally correspond to a lower percentage of fees being deemed
17 reasonable. *See Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1052 (9th Cir. 2002) (compiling an
18 appendix of class settlements with gross settlement funds of \$53 million to \$193 million and a range of
19 2.8% to 40% in awarded attorney’s fees, averaging approximately 22%). Rather than acting as a cap on
20 any fee, the percentages applied in cases are a tool to cross check the reasonableness of the fee just as
21 the lodestar method is a tool to cross check the reasonableness of the requested percentage. *See Karton*,
22 61 Cal.App.5th at 744; *Vizcaino*, 290 F.3d at 1048 (“courts cannot rationally apply any particular
23 percentage—whether 13.6 percent, 25 percent or any other number—in the abstract, without reference
24 to all the circumstances of the case”).

25 To the extent the Court wishes to exercise its discretion to conduct a lodestar cross check, the
26 cross check only validates the fee request. *See Laffitte*, 1 Cal.5th at 503-506. Again, an award of
27 attorney’s fees should include compensation for all hours reasonably spent. *See Ketchum*, 24 Cal.4th at
28 1133; *see also Hensley*, 461 U.S. at 431 (finding hours are reasonably spent if they are the kind

1 normally billed to a fee-paying client). To date, Class Counsel has spent approximately 263.7 hours
2 performing tasks that would normally be billed to any fee playing client in complex litigation and
3 estimate that this number will increase to approximately 283.7 after monitoring the disbursement of all
4 funds and compliance hearing(s). *See* Decl. Rodriguez, ¶ 22; Exhibit F; *Syers Props. III, Inc. v. Rankin*,
5 226 Cal.App.4th 691, 699 (2014) (“Because time records are not required under California law ... ,
6 there is no required level of detail that counsel must achieve.”) (internal quotations omitted).
7 At the prevailing market rates for Class Counsel’s level of experience and this type of complex
8 litigation, this equates to a lodestar of approximately \$160,622.50. *See* Decl. Rodriguez, ¶¶ 21-23;
9 *Children’s Hosp. and Med. Ctr. v. Bonta*, 97 Cal.App.4th 740, 746 (2002) (noting rates were reasonable
10 where they were “within the range of reasonable rates charged by and judicially awarded comparable
11 attorneys for comparable work”).

12 The reasonableness of Class Counsel’s fee request is also demonstrated by the fact that the
13 amount requested would not require any multiplier of the lodestar. Multipliers are typically awarded in
14 contingent fee litigation to compensate counsel for the risk of non-payment:

15 It is an established practice in the private legal market to reward attorneys
16 for taking the risk of non-payment by paying them a premium over their
17 normal hourly rates for winning contingency cases. *See Richard Posner,*
18 *Economic Analysis of Law* § 21.9, at 534-35 (3d ed. 1986). Contingent
19 fees that may far exceed the market value of the services if rendered on a
non-contingent basis are accepted in the legal profession as a legitimate
way of assuring competent representation for Plaintiff who could not
afford to pay on an hourly basis regardless whether they win or lose.

20 *Chem. Bank v. City of Seattle (In re Wash. Pub. Power Supply Sys. Sec. Litig.)*, 19 F.3d 1291, 1299 (9th
21 Cir. 1994). Moreover, “in the common fund context, attorneys whose compensation depends on their
22 winning the case, must make up in compensation in the cases they win for the lack of compensation in
23 the cases they lose.” *Id.* at 1300-01; *see also Ketchum*, 24 Cal.4th at 1138 (“The adjustment to the
24 lodestar figure, *e.g.*, to provide a fee enhancement reflecting the risk that the attorney will not receive
25 payment if the suit does not succeed, constitutes earned compensation; unlike a windfall, it is neither
26 unexpected nor fortuitous”); *Wershba*, 91 Cal.App.4th at 255 (“Multipliers can range from 2 to 4 or
27 even higher”). Yet, Class Counsel’s requested fee of \$146,125 would actually result in a negative
28

multiplier. As a result, a lodestar cross check validates the common fund percentage requested and the Court should grant Plaintiffs' Counsel's fee request. *See* Decl. Rodriguez, ¶¶ 21-23.

b. Class Counsel's Expenses and Costs Were Necessarily Incurred to Achieve the Benefit Obtained

The appropriate analysis in determining whether particular costs are compensable is whether they are of the type typically billed by attorneys to paying clients in the marketplace. *See Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994) ("Harris may recover as part of the award of attorney's fees those out-of pocket expenses that 'would normally be charged to a fee paying client'"); *Abrams v. Lightolier, Inc.*, 50 F.3d 1204, 1225 (3d Cir. 1995); *Bratcher v. Bray-Doyle Indep. Sch. Dist. No. 42*, 8 F.3d 722, 725-26 (10th Cir. 1993). The categories of expenses for which Class Counsel seek reimbursement here are categories normally charged to hourly clients and, therefore, should be reimbursed out of the common fund. *See* Decl. Rodriguez, ¶ 24; Exhibit D.

c. Class Counsel's Request for A Class Representative Enhancement Payment Is Justified In Light of The Results Achieved for the Class

A service payment to a named plaintiff is intended to recognize their time and effort on behalf of the class. Indeed, courts routinely approve incentive awards to compensate named plaintiffs for the services they provide and the risks they incurred during the course of the class action litigation. *See Ingram v. The Coca Cola Co.*, 200 F.R.D. 685, 694 (N.D. Ga. 2001). In *Ingram*, the Court approved incentive awards of \$300,000.00 to each named Plaintiff in recognition of the services they provided to the class by responding to discovery, participating in the mediation process, and taking the risk of stepping forward on behalf of the class. *See id.* at 694; *see also Van Vranken v. Atlantic Richfield Co.*, 901 F.Supp. 294 (N.D. Cal. 1995) (approving a \$50,000.00 participation award); *Cellphone Termination Fee Cases*, 186 Cal.App.4th 1380, 1393 (2010) (approving \$10,000 awards to each of the four (4) named plaintiffs).

In this case, Plaintiff spent approximately 105-115 hours providing substantial support in helping to secure payment to Class Members. Plaintiff provided and explained a substantial number of documents critical to helping establish important facts central to this case and participated in substantial amount of informal discovery. *See* Decl. Martin, ¶¶ 5-7. Plaintiff is also subject to a much broader

1 release of claims than Class Members, including a Civil Code section 1542 release. *See* Decl. Martin, ¶
2 8. Payment of \$10,000.00 to Plaintiff is appropriate given the risk, assistance, time required, and
3 burden experienced in bringing and resolving this case, especially since this amount was identified in
4 the Notice of Settlement and no objections to it have been received. *See West v. Circle K Stores, Inc.*,
5 2006 U.S. Dist. LEXIS 76558, at *7-*8, *12, *27 (E.D. Cal. 2006) (awarding a \$15,000 representative
6 enhancement where 10,000 class members were to receive a gross award of approximately \$500 each
7 from the \$5,000,000 settlement); *Dent v. ITC Serv. Group*, 2013 U.S. Dist. LEXIS 139359, at *9-*10,
8 *15-*16 (D. Nev. 2013) (awarding a \$15,000 representative enhancement out of a \$150,000 settlement
9 for approximately 530 class members).

10 **d. The Court Should Approve the Payment of Settlement Administrator Costs**

11 Since being preliminarily approved as the Settlement Administrator, Apex Class Action has
12 carried out its duties as set forth in the Court's order and the Agreement. *See generally* *See* Decl. Nava.
13 Under the Agreement, a maximum of \$10,000 was set aside for potential Settlement Administrator
14 Costs. Apex Class Action's final costs are \$5,900.00, well under the potential maximum Class
15 Members were given notice of. Plaintiff requests that the Court approve payment to the Settlement
16 Administrator in the amount of \$5,900.00 to compensate it for the costs of administration as part of the
17 final order approving the Settlement.

18 **VIII. CONCLUSION**

19 For all of the foregoing reasons, Plaintiff respectfully requests that this Court certify the class
20 for settlement purposes; grant final approval of the proposed settlement, including the Enhancement
21 Payment, the payment to the LWDA under PAGA, and Class Counsel's application for reasonable
22 attorneys' fees and costs; find that the Notice of Settlement, and administration process satisfied Class
23 members' due process rights; and approve the proposed order submitted concurrently herewith.

24 **Shimoda & Rodriguez Law, PC**

25 Dated: July 12, 2024

26 By: _____

Galen T. Shimoda

Justin P. Rodriguez

Renald Konini

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

Date: August 9, 2024

Time: 9:00 a.m.

Dept.: 23

Judge: Hon. Jill Talley

Filed: February 15, 2023

FAC Filed: May 25, 2023

SAC Filed: March 6, 2024

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 Final Approval of Class Action and PAGA Settlement.

5 2. I worked for Defendant Western Engineering Contractors, Inc. ("Defendant") from April
6 2, 2021, to April 16, 2021, February 11, 2022, to February 15, 2022, and March 4, 2022, to May 16,
7 2022, as a non-exempt employee. I was subject to all of Defendant's policies and practices that have
8 been alleged as unlawful in the Complaint and the notice sent to the Labor and Workforce
9 Development Agency, including the following: failure to record and pay all hours worked, failure to
10 pay overtime, failure to pay minimum wages, failure to provide meal and rest periods or pay premiums
11 in lieu thereof, failure to provide accurate wage statements, failure to properly calculate the regular rate
12 of pay for paid sick leave and overtime purposes, failure to timely pay final wages, failure to reimburse
13 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. Prior to obtaining an attorney, I performed several hours of research over a period of about a
16 month on the potential claims. I wanted to be sure I could have an informed discussion with the
17 attorneys about the claims and have a better idea of what to expect in litigation and how to help the case
18 proceed. After securing Shimoda & Rodriguez Law, PC, I continued to be actively involved in the case
19 to help ensure a positive outcome.

20 4. My attorneys explained to me the risks and benefits of bringing a class action and a
21 claim under the Private Attorneys General Act ("PAGA"). I understood that pursuing the case as a
22 class and PAGA action meant that it would take substantially longer than pursuing my claims
23 individually, whether in Court or with the California Labor Commissioner, and that I risked getting
24 nothing in the end, but I believed it was important to make sure that Defendant followed the law for
25 everyone. I understood that I took on the risk, both professionally and financially, in pursuing the case
26 as a class and PAGA action rather than pursuing my claims individually, including the risk of having to
27 pay Defendant's costs if we were unsuccessful in bringing our claims.

1 5. During the course of this litigation, I have given detailed accounts of all the facts related
2 to my employment. I provided my attorneys with extensive documentation that I believe supported the
3 claims brought against Defendant. I met with and assisted my attorneys in understanding these
4 documents and providing context for Defendant's payroll process as it applied to me and how I
5 believed it applied to Defendant's other employees. I worked for Defendant during three separate
6 periods of time during the class period, so I was able to discuss the similarities of the wage and hour
7 policies and practices among all Class Members.

8 6. The work I performed for this case included a review of documents and payroll practices
9 to show and explain to my attorneys what was happening and why I thought it was unlawful. For
10 example, I went over time records produced by Defendant with my attorneys to give context to
11 Defendant's practices regarding tracking employees' hours worked and in particular that Defendant's
12 foremen were recording my hours on my timecard rather than myself. This was important as it helped
13 the minimum wage and meal period claims. The review became even more detailed when my attorneys
14 asked me questions about the payroll data sample that was produced as part of informal discovery to
15 engage in mediation. Overall, I have spent a substantial amount of time assisting in the prosecution of
16 this case. I estimate that I spent approximately 105 to 115 hours assisting with this case.

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

23 8. I have not received any benefits as a result of filing this lawsuit. I have, however,
24 experienced substantial burdens as a result of filing the lawsuit that other Class Members were not
25 subject to. For example, in bringing the lawsuit, I assumed the risk of having to pay Defendant's costs
26 if the Court or jury rules against us on the claims. My understanding is that this is a substantial risk
27 because the costs associated with litigation, in general, are very high and this cost is multiplied many
28 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 July 12 2024 in Sacramento, California.

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19 
Maurece Martin (Jul 12, 2024 13:37 PDT)
20 Maurece Martin
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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 JUSTIN P. RODRIGUEZ IN
SUPPORT OF PLAINTIFF'S MOTION FOR
FINAL APPROVAL OF CLASS ACTION AND
PAGA SETTLEMENT**

Date: August 9, 2024

Time: 9:00 a.m.

Dept.: 23

Judge: Hon. Jill Talley

Filed: February 15, 2023

FAC Filed: May 25, 2023

SAC Filed: March 6, 2024

Trial Date: None set

1 I, Justin P. Rodriguez, 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, Class Members, and in support of Plaintiff’s Motion for
5 Final Approval of Class Action and PAGA Settlement (“Motion”). A true and correct copy of the Joint
6 Stipulation Regarding Class Action and PAGA Settlement and Release (“Agreement”) in this matter is
7 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. A Second Amended Complaint was filed on

1 March 6, 2024, to match the scope of the resolution reached by the Parties, adding claims for unpaid
2 travel time, failure to reimburse expenses and failure to pay accrued vacation. A true and correct copy
3 of Plaintiff's Second Amended Complaint is filed with this Motion as Exhibit B. Plaintiff exhausted
4 administrative remedies through the Labor and Workforce Development Agency ("LWDA") prior to
5 amending the Complaint to add a PAGA claim. Plaintiff filed a notice with the LWDA on February 14,
6 2023, setting forth the facts and theories of liability. Plaintiff sent amended notices on November 29,
7 2023, and December 6, 2023, to add additional claims to match the scope of the resolution at mediation
8 and to clarify the scope of the claim period. A true and correct copy of the operative notice filed with
9 the LWDA is being filed with this Motion as Exhibit C. Copies of the notices were also sent to
10 Defendant via certified mail and the \$75.00 filing fee was remitted to the LWDA. There was no
11 response by the LWDA regarding its intent to investigate the claims alleged in Plaintiff's notices for
12 more than 65 days. As such, Plaintiff was authorized to commence a civil action under the PAGA.

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

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

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

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

1 7. My office, including my partner Galen T. Shimoda, my associate Renald Konini, my
2 former associate Brittany V. Berzin, our paralegal, and myself, along with Plaintiff's assistance,
3 thoroughly investigated the merits of the claims and potential damages for such claims. The parties
4 engaged in informal discovery and exchange of documents, including a representative 20% sampling of
5 employee data, covering timecards, paystubs, payroll data and relevant handbooks, bulletins, and
6 memoranda containing Defendant's policies for the entirety of the statute of limitations applicable to the
7 alleged claims. The discovery covered all aspects of the asserted claims, including certification issues,
8 merits issues, damages, the scope and configuration of Class Members, the content and implementation
9 of the wage and hour policies at issue, issues relating to manageability concerns at trial, among other
10 relevant areas. From this production we were able to determine information critical to a reliable
11 damages analysis such as the average hourly rate, average daily hours worked, shifts eligible for meal
12 and rest periods and the number of potential shifts that may correspond to liability under our theories of
13 liability, the average number of workweeks and pay periods that had potential violations based on the
14 asserted claims, the frequency with which violations occurred in a given week and/or pay period, and the
15 number of former employees. This information allowed my office to assess both liability and damages
16 and create an accurate damages model. Plaintiff assisted in all aspects of this litigation including
17 providing factual information relating to Plaintiff's and Class Members' employment conditions,
18 providing a substantial number of documents, and answering questions regarding Defendant's factual
19 contentions in this matter. This was important because it directly related to our ability to maintain this
20 case as a class action and our ability to obtain a favorable settlement for the class.

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

27 9. The following represents the potential maximum recovery for each of Plaintiff's claims
28 based on my office's analysis of Defendant's relevant policies and the data produced by Defendant,

1 including a sample of time and payroll records for Class Members. There were 3,861 workweeks in the
2 Class Period (weeks worked by employees who did not sign arbitration agreements) and 5,188 pay
3 periods in the PAGA Claim Period:

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

27 b) Overtime & Double Time Wages: This claim is based on allegations that Defendant paid
28 Class Members different hourly rates within the same workday and/or workweek (due to

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

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

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

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

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

26 f) Wage Statement: This claim is based on allegations that Defendant failed to include all
27 pay periods and employee ID numbers or the last 4 digits of their social security number
28 on wage statements. This claim is also derivative of the claims above with regard to

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

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

- 1 h) 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 i) 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 j) 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 value of the claims in this matter (\$4,958,666.32) and between 13.9% and 38.8% of the more realistic range of recovery (\$1,076,140.55 to \$2,996,700.77). After deducting from the Gross Settlement Amount the proposed allocations for attorneys' fees (\$146,125) and costs (\$6,976.71), an Enhancement Payment (\$10,000), Settlement Administrator Costs (\$5,900), and the PAGA Payment to the LWDA (\$41,750), the net recovery under the Agreement, \$206,748.29, represents approximately 4.2% of the maximum value of the claims in this matter. The net recovery also represents between 6.9% and 19.2% of the more realistic range of recovery for the class and PAGA claims. The average net award is approximately \$2,297.20 and the maximum award is \$11,401.99. 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 proceed to further litigation and potentially recover nothing, was a motivating factor in reaching this Agreement.

1 11. In agreeing to take on this case, our office agreed to take this case on a contingency
2 basis, meaning that we would take a percentage of any settlement or judgment should we recover a
3 monetary amount. We took a risk that we would not recover any money in this matter if we were
4 unsuccessful at trial. We also took on the risk that the case may be subject to an unfavorable summary
5 judgment ruling. However, we believe it is important to make sure employees are able to find
6 affordable representation in order to ensure that employers are complying with all their legal
7 obligations towards employees and paying employees all their hard-earned wages. We rely on
8 attorneys' fee awards in order to continue working to ensure California wage and hour protections are
9 enforced. Recovery of our full lodestar plus an appropriate multiplier is necessary to compensate for
10 the risk undertaken. Otherwise, we could not continue to represent employees who are denied wages,
11 but whose cases may be time-consuming and difficult to prove. There have been many class cases we
12 have litigated where ultimately, we get zero for our time because we are unable to meet certification
13 requirements or the company becomes financially insolvent. Additionally, there are occasions, where
14 the fee recovered actually results in a negative multiplier of our lodestar.

15 12. I am a shareholder at Shimoda & Rodriguez Law, PC. My law firm is a boutique law
16 practice that focuses primarily on employment litigation, emphasizing wage and hour litigation. I
17 attended and graduated college from U.C. Davis, receiving a Bachelor of Arts in Philosophy and the
18 Departmental Citation for Academic Achievement in the Philosophy program. I was one of only two
19 recipients of this award out of the entire Philosophy Department. After U.C. Davis, I attended the
20 University of the Pacific, McGeorge School of Law, graduating in 2011 and receiving a Juris
21 Doctorate. I graduated in the top 20% of my class and was a member of the Traynor Honor Society at
22 McGeorge. Other academic achievements of mine include receiving a Witkin Award (top grade) in my
23 legal research and writing course, a Witkin Award in complex civil litigation, being a member of the
24 Dean's List from 2008 to 2011, being a Legislative Staff Writer for the *McGeorge Law Review* from
25 2009–2010, being an Associate Comment Editor for the *Pacific McGeorge Global Business &*
26 *Development Law Journal* from 2010–2011, and being selected as a Sacramento County Bar
27 Association Diversity Fellow in 2009. I was also a member of the Employment and Labor Law Society
28 and an officer for the Latino Law Students Association from 2009 to 2010.

13. I have been practicing law since 2011. From 2011 to 2016, I worked with the Shimoda Law Corp. as an Associate. I became a Shareholder/Partner in the firm in 2017. Shimoda Law Corp. became Shimoda & Rodriguez Law, PC, in 2022. Since 2017, I have received an AV Preeminent rating from Martindale-Hubbell for my legal ability and ethical standards. From 2018 to 2023, I have been recognized as a Super Lawyer (Rising Star). From 2024 to the present, I have been recognized as a Super Lawyer. I have been a panel speaker and presented a number of seminars covering issues in 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). I 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. I have also been a member of the Presiding Judge Civil Law Advisory Committee for Sacramento County Superior Court since August 2020. My practice focuses on complex civil litigation, including wage and hour class actions, PAGA claims, and Fair Labor Standards Act ("FLSA") claims. I am actively involved in most all of the complex litigation handled by our firm. Class and/or PAGA actions I have litigated or am currently litigating, including the instant case, includes, 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.);

- 1 • *Aslam v. Surveillance, Security, Inc.*, Case No. 34-2017-00220142 (Sac. Sup. Ct.);
- 2 • *Azzolino v. Brake Masters of Sacramento, LLC, et al.*, Case No. 34-2017-00218293 (Sac.
- 3 Sup. Ct.);
- 4 • *Barkhausen v. Bank of Stockton*, Case No. STK-CV-UOE-2019-17145 (San Joaquin Sup.
- 5 Ct.);
- 6 • *Benak v. MDStat Urgent Care, Inc.*, Case No. 34-2015-00188181 (Sac. Sup. Ct.);
- 7 • *Bigornia v. Quest Diagnostics Clinical Laboratories, Inc., et al.*, Case No. 34-2019-
- 8 00271174 (Sac. Sup. Ct.);
- 9 • *Blig v. Medical Management International, Inc.*, Case No. 34-2017-00213906 (Sac. Sup.
- 10 Ct.);
- 11 • *Caguioa, et al. v. Fortune Senior Enterprises, et al.*, Case No. 34-2014-00171831 (Sac. Sup.
- 12 Ct.);
- 13 • *Camacho, et al. v. Z Street, Inc., d.b.a. Tower Café, et al.*, Case No. 34-2014-00163880 (Sac.
- 14 Sup. Ct.);
- 15 • *Castorena v. Flowmaster, Inc.*, Case No. CV18-2191 (Yolo Sup. Ct.);
- 16 • *Cannon v. Miller Event Management, Inc., et al.*, Case No. 34-2014-00168103 (Sac. Sup.
- 17 Ct.);
- 18 • *Carr, et al. v. CableCom, LLC*, Case No. 34-2017-00212739 (Sac. Sup. Ct.);
- 19 • *Chace v. Daisy Holdings, LLC, dba Pine Creek Care Center, et al.*, Case No. 34-2017-
- 20 00209613 (Sac. Sup. Ct.);
- 21 • *Clamens-Hollenback v. Atterro, Inc.*, Case No. 17-CV-305535 (Santa Clara Sup. Ct.);
- 22 • *Cress, et al. v. Mitsubishi Chemical Carbon Fiber and Composites, Inc.*, Case No. 34-2017-
- 23 00222101 (Sac. Sup. Ct.);
- 24 • *De Arcos v. Amware Pallet Services, LLC*, Case No. CV-17-629 (Yolo Sup. Ct.);
- 25 • *Ferreyra v. Point Digital Finance, Inc., et al.*, Case No. 20CV373776 (Santa Clara Sup. Ct.);
- 26 • *Foye v. The Golden 1 Credit Union*, Case No. 34-2018-00235003 (Sac. Sup. Ct.);
- 27 • *Garcia v. A-L Financial Corp.*, Case No. 34-2014-00171831 (Sac. Sup. Ct.);
- 28 • *Garcia v. Royal Plywood Company, LLC, et al.*, Case No. 34-2017-00221627 (Sac. Sup. Ct.);

- 1 • *Gomes v. Progressive Casualty Insurance Company*, Case No. 34-2018-00241979 (Sac. Sup.
- 2 Ct.);
- 3 • *Gomez v. Mayflower Farms Incorporated, et al.*, Case No. CV24157 (Colusa Sup. Ct.);
- 4 • *Gilliam v. Matrix Energy Services, Inc.* Case No. RG 11592345 (Alameda Sup. Court);
- 5 • *Gonzalez v. Northcentral Pizza, LLC, et al.*, Case No. 34-2019-00252018 (Sac Sup. Ct.);
- 6 • *Gordon, et al. v. Hospice Source, LLC, et al.*, Case No. 34-2019-00250022 (Sac. Sup. Ct.);
- 7 • *Gotts v. John L. Sullivan Chevrolet, Inc.*, Case No. 34-2018-00231576 (Sac Sup. Ct.);
- 8 • *Hartwell v. Techforce Telecom, Inc.*, Case No. 39-2014-00307197 (San Joaquin Sup. Ct.);
- 9 • *Hellum v. A1 Protective Services, LLC, et al.*, Case No. 34-2018-00234449 (Sac. Sup. Ct.);
- 10 • *Hercules v. Maximus Services, LLC, et al.*, Case No. 34-2019-00268385 (Sac Sup. Ct.);
- 11 • *Hernandez v. Snyir, Inc.*, Case No. 34-2017-00207641 (Sac. Sup. Ct.);
- 12 • *Heinz v. Wright Tree Services*, Case No. 34-2012-00131949 (Sac. Sup. Ct.);
- 13 • *Hoover v. Mom365*, Case No. 2:17-cv-01328-TLN-CKD (E.D. Cal.);
- 14 • *Insixiengmay v. Hyatt Corporation, et al.*, Case No. 2:18-cv-02993-TLN-DB (E.D. Cal.);
- 15 • *Josol v. Dial Medical Corp.*, Case No. 34-2008-00010040 (Sac. Sup. Ct.);
- 16 • *McMahon v. Airco Mechanical, Inc.*, Case No. 34-2019-00259269 (Sac. Sup. Ct.);
- 17 • *Muhieddine v. KBA Docusys, Inc.*, Case No. 34-2014-00164720 (Sac. Sup. Ct.);
- 18 • *Nguyen v. Cardinal Health Pharmacy Services, LLC, et al.*, Case No. 2:19-cv-01939-KJM-
- 19 EFB (E.D. Cal.);
- 20 • *Prasad v. D. G. Smith Enterprises, Inc.*, Case No. 34-2017-00215046 (Sac. Sup. Ct.);
- 21 • *Ralston v. JMJ Incorporated, Inc. et al.*, Case No. 34-2017-00217047 (Sac. Sup. Ct.);
- 22 • *Roberts v. CableCom, LLC*, Case No. 34-2017-00212739 (Sac. Sup. Ct.);
- 23 • *Robinson v. West of Chicago Restaurants, Inc., dba Chicago Fire*, Case No. 34-2010-
- 24 00082201 (Sac Sup. Ct.);
- 25 • *Salas, et al. v. Joint Ventures, LLC, et al.*, Case No. 34-2018-00227493 (Sac. Sup. Ct.);
- 26 • *Salmon v. Ovarions Fanfare, L.P., et al.*, Case No. 34-2018-00244749 (Sac. Sup. Ct.) ;
- 27 • *Scarano v. J.R. Putman, Inc.*, Case No. 34-2018-00244753 (Sac. Sup. Ct.) ;
- 28 • *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. 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.).

14. The preceding list 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.

15. My partner, Galen T. Shimoda, Esq., worked with me on this matter, assisting with all aspects of the litigation of this case. Mr. Shimoda and I are some of only a handful of plaintiff attorneys located in Sacramento who handle wage and hour class actions. Mr. Shimoda attended and graduated from the University of Utah in 2000 with a B.S. in Business Management and a B.A. in Asian Studies, with a minor in Japanese language. He then attended and graduated from the University of the Pacific, McGeorge School of Law and received his J.D. degree in 2003. He graduated from McGeorge in the top 5% of his class and was a member of the Order of the Coif and Traynor Honor Society. Since graduating from McGeorge, Mr. Shimoda has authored a number of employment law articles for journals and our firm regularly publishes articles on our firm's website. Mr. Shimoda has been a regular panel speaker for the CEB (Continuing Education of the Bar) Employment Review seminars from 2014 to the present. His speaking engagements include the following: 1) Lorman Military Leave Law Speaker; 2) Restaurant Association Speaker at Annual Seminar (Los Angeles); 3) Federal Bar Association, Sacramento Chapter: 2015 Amendments to the Federal Rules of Civil Procedure (Mar. 30, 2016); 4) CEB – Employment Law Practice: 2016 Year in Review (Jan. 20, 2017); 5) CEB – Employment Law Practice: 2015 Year in Review (Jan. 22, 2016); 6) CEB – Employment Law Practice: Year in Review (2014) (Jan. 9, 2015); 7) CEB - Employment Law Practice: Year in Review (2013) (Jan. 10, 2014); 8) Sacramento County Bar Association - Class Actions from the Trenches: Real World Experiences from the Plaintiff and Defense Bar (Feb. 21, 2012); 9) Sacramento Employer Advisory Council – Wage and Hour Workshop: Going Beyond the Exemption Discussion (Apr. 7, 2016); 10) Sacramento Employer Advisory Council - Wage & Hour Panel and AB 1825

1 Training: Updates on California's New Wage Laws and Manager Compliance Training (Apr. 25,
2 2017); 11) Sacramento County Bar Association, Labor and Employment Section – PAGA
3 Representative Litigation: Emerging Trends and Issues (May 17, 2016); 12) Sacramento Business
4 Journal Panel – Overtime Rules (Jun. 23, 2016); 13) Association of Defense Counsel of Norther
5 California & Nevada - Employment Law Update – Do the Math: Calculation Exposure and Damages in
6 Wage and Hour Cases (Aug. 12, 2016); 14) California Employment Lawyers Association - PAGA
7 Today and PAGA Tomorrow: Moderate-Advanced Issues In PAGA Litigation (Oct. 20, 2017); 15)
8 California Employment Lawyers Association Advanced Wage and Hour Seminar – Better Know a
9 Venue Roundup (May 17, 2019). Mr. Shimoda has been AV rated by Martindale Hubbell since 2013,
10 was recognized as a Super Lawyer (Rising Star) from approximately 2009 to 2013 and was recognized
11 as a Super Lawyer from 2014 to present.

12 16. Mr. Shimoda has practiced law in California since being admitted to the State Bar in
13 2003, litigating wage and hour class actions and individual wage and hour litigation among other cases.
14 Mr. Shimoda began practicing class action law on the defense side at the firm of Orrick, Herrington &
15 Sutcliffe LLP. He then switched to plaintiff class action work in 2005. His class action experience is
16 in wage and hour law. Mr. Shimoda has litigated several class action cases in California State and
17 Federal Courts, including up to certification, settlement, preliminary and final approval, and
18 disbursement of monies, and has been found to be satisfy the adequacy requirements for class counsel.
19 Some of the class action and/or PAGA cases he is litigating and/or has litigated as lead or co-counsel
20 include the following:

- 21 • *Aanerud v. Neumann Ltd., et al.*, Case No. 34-2014-00169324 (Sac. Sup. Ct.);
- 22 • *Acosta v. Acosta Sales, LLC, et al.*, Case No. 2:11-CV-01796 (C.D. Cal.);
- 23 • *Atchley v. Blaggs Food Service, LLC*, 34-2017-0215930 (Sac. Sup. Ct.);
- 24 • *Adewumi v. GHS Interactive Security, LLC*, Case No. 34-2017-00210768 (Sac. Sup. Ct.);
- 25 • *Arnall v. North American Merchandising Service Inc.*, Case No. 06AS01439 (Sac. Sup. Ct.);
- 26 • *Arrington v. Capital Express Lines, Inc., et al.*, Case No. 34-2012-00134195 (Sac. Sup. Ct.);
- 27 • *Aslam v. Cypress Security, LLC*, Case No. 34-2017-00220143 (Sac. Sup. Ct.);
- 28 • *Aslam v. Surveillance, Security, Inc.*, Case No. 34-2017-00220142 (Sac. Sup. Ct.);

- 1 • *Azzolino v. Brake Masters of Sacramento, LLC, et al.*, Case No. 34-2017-00218293 (Sac.
2 Sup. Ct.);
- 3 • *Benak v. MDStat Urgent Care, Inc.*, No. 34-2015-00188181 (Sac. Sup. Ct.);
- 4 • *Blig v. Medical Management International, Inc.*, Case No. 34-2017-00213906 (Sac. Sup.
5 Ct.);
- 6 • *Caguioa, et al. v. Fortune Senior Enterprises, et al.*, Case No. 34-2014-00171831 (Sac. Sup.
7 Ct.);
- 8 • *Camacho, et al. v. Z Street, Inc., d.b.a. Tower Café, et al.*, Case No. 34-2014-00163880 (Sac.
9 Sup. Ct.);
- 10 • *Carlos v. Abel Mendoza, Inc., et al.*, Case No. 34-2016-00195806 (Sac. Sup. Ct.);
- 11 • *Cannon v. Miller Event Management, Inc., et al.*, Case No. 34-2014-00168103 (Sac. Sup.
12 Ct.);
- 13 • *Carr et al. v. CableCom, LLC*, Case No. 34-2017-00212739 (Sac. Sup. Ct.);
- 14 • *Chace v. Daisy Holdings, LLC, dba Pine Creek Care Center, et al.*, Case No. 34-2017-
15 00209613 (Sac. Sup. Ct.);
- 16 • *Clamens-Hollenback v. Atterro, Inc.*, Case No. 17-CV-305535 (Santa Clara Sup. Ct.);
- 17 • *Colbert v. American Home Craft Inc.*, Case No. 05AS05012 (Sac. Sup. Ct.);
- 18 • *De Arcos v. Amware Pallet Services, LLC*, Case No. CV-17-629 (Yolo Sup. Ct.)
- 19 • *Diosdado v. Nor-Cal Venture Group, Inc., et al.*, Case No. STK-CV-UOE-2020-0008242
20 (San Joaquin Sup. Ct.);
- 21 • *Duque v. Sierra Forever Families, et al.*, Case No. 34-2017-00210770 (Sac. Sup. Ct.);
- 22 • *Fadhl v. Siemens Healthcare Diagnostics, Inc., et al.*, Case No. 34-2017-00209518 (Sac.
23 Sup. Ct.);
- 24 • *Fujimoto v. Nabe-Ya, Inc., et al.*, Case No. 20CV01255 (Butte Sup. Ct.);
- 25 • *Garcia v. A-L Financial Corp.*, Case No. 34-2014-00171831 (Sac. Sup. Ct.);
- 26 • *Gerard v. Les Schwab Tires Center of California, Inc.*, Case No. 34-2007-30000003 (Sac.
27 Sup. Ct.);
- 28 • *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);
- *Hartwell v. Techforce Telecom, Inc.*, Case No. 39-2014-00307197 (San Joaquin Sup. Ct.);
- *Hernandez et al. v. MP Nexlevel, LLC et al*, Case No. 3 :16-cv-03015-JCS (N.D. Cal.);
- *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.);
- *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.);
- *Miller v. Leaders in Community Alternatives*, Case No. FCSO47249 (Solano Sup. Ct.);
- *Pickens v. Elica Health Centers*, Case No. 34-2016-00200382 (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.);
- *Rickwalt v. Direct Reconditioning, LLC, et al.*, Case No. 34-2015-00175642 (Sac. Sup. Ct.);
- *Robinson v. West of Chicago Restaurants, Inc., dba Chicago Fire*, Case No. 34-2010-00082201 (Sac Sup. Ct.);
- *Rogers v. Les Scwhab Tires Center of California, Inc.*, Case No. 34-2009-00066320 (Sac. Sup. Ct.);
- *Schechter et al. v. Isys Solutions, Inc.*, Case No. RG10550517 (Alameda Sup. Ct.);
- *Smith v. Greyhound Lines, Inc.*, Case No. 34-2017-00219188 (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. No. 34-2017-00211553 (Sac. Sup. Ct.);
- *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.).

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

18. My associate, Renald Konini, Esq., also worked with me on this case. In May 2011, Mr. Konini graduated from Seton Hall University School of Law. Prior to moving to California, he practiced law in New Jersey. While working for my firm, Mr. Konini has worked on a variety of individual and class action cases, including those involving wage and hour claims, Private Attorney General Act claims, wrongful termination claims, discrimination claims, retaliation claims, and harassment claims. Mr. Konini passed the July 2016 California Bar Examination and started practicing as an associate at my firm from approximately April 2019 to February 2021. He rejoined my firm in September 2022. Mr. Konini has experience drafting written discovery, taking and defending depositions, calculating class-wide damages, interviewing putative class members, drafting motions and briefs on complex class action procedures, negotiating class and individual damages claims, and communicating with opposing counsel regarding these items in navigating the litigation. Mr. Konini has also worked on other class and/or PAGA wage and hour actions that my firm has filed, namely *Bertelli v. Air Products and Chemicals, Inc.*, Case No. 34-2018-00236898 (Sac. Sup. Ct.), *Carr v. Howroyd-Wright Employment Agency, Inc.*, Case No. 34-2018-00228290 (Sac. Sup. Ct.), *Gomez v. Vander Schaaf Dairy, et al.*, Case No. STK-CV-UOE-2020-0003954 (San Joaquin Sup. Ct.), *Haggins v. Kelly Services, Inc.*, Case No. 34-2017-00220473 (Sac. Sup. Ct.), *Hussaini v. Integrated Resources, Inc.*, et al, Case No. 34-2021-00297152 (Sac. Sup. Ct.), *Kee, et al. v. Dr. Jeffrey A. Saladin, Dental Corporation (D/B/A Children's Choice Pediatric Dental Care), et al.*, Case No. 34-2020-00290072 (Sac. Sup. Ct.), *Lear v. Raxium, Inc.*, Case No. 21CV004358 (Alameda Sup. Ct.), *Serrano v. Cool Time, LLC*, Case No. 34-2021-00312356 (Sac. Sup. Ct.), *Grebe v. Mary Ann's Baking Co., Inc.*, Case No. 34-2020-00285254-CU-OE-GDS (Sac. Sup. Ct.), *Fujimoto v. Nabe-Ya, Inc., et al.*, Case No. 20CV01255 (Butte Sup. Ct.), *Massey v. V3 Electric, Inc., et al.*, Case No. 34-2019-00263666 (Sac.

1 Sup. Ct.), *Miller v. Caldwell Transportation Company, LLC, et al.*, Case No. 34-2018-00234954 (Sac.
2 Sup. Ct), *Pek, et al v. Varris Management, Inc.*, Case No. STK-CV-UOE-2020-3954 (San Joaquin Sup.
3 Ct.), *Valencia v. Lowbrau Bier Garten, LLC, et al.*, Case No. 34-2019-00258038 (Sac Sup. Ct). Mr.
4 Konini's practice largely revolves around wage and hour matters, including class and PAGA claims.

5 19. My former associate, Brittany V. Berzin, attended and graduated college from U.C.
6 Davis, receiving a Bachelor of Arts in Psychology. Ms. Berzin received her J.D. from the University of
7 the Pacific McGeorge School of Law. Ms. Berzin joined Shimoda & Rodriguez Law, PC as a law clerk
8 in February 2015 where she gained civil litigation experience working on individual, class action and
9 PAGA employment cases throughout law school. Ms. Berzin also participated in an employment law
10 clinic in 2015 and 2016 that helps low-income workers by providing free legal consultations, advising
11 employees of their legal remedies on a variety of matters (*e.g.*, wage and hour, discrimination,
12 harassment, California leave laws, unemployment, workers' compensation, retaliation, and wrongful
13 termination, etc.) under the supervision of an attorney, preparing wage claims, and providing
14 representation in wage claims before the California Labor Commissioner. From 2016-2017, Ms.
15 Berzin completed an externship at the Federal Public Defenders Office as a Certified Law Student
16 where Ms. Berzin obtained discovery, completed legal research, drafted motions, negotiated plea deals,
17 represented clients in a variety of hearings (*e.g.*, arraignments, motion hearings, sentencing hearings,
18 etc.), and defended a client against five misdemeanor charges in a jury trial in the United States District
19 Court for The Eastern District of California. Ms. Berzin was also a member of the nationally
20 recognized McGeorge Mock Trial Team and went on to coach a high school Mock Trial team in 2018
21 after graduating from law school. In May 2017, Ms. Berzin graduated from the University of the
22 Pacific, McGeorge School of Law with Great Distinction and was inducted into the Order of the Coif,
23 graduating in the top 10% of her class. Ms. Berzin received the Witkin Award for Academic
24 Excellence in Legal Research and Writing, Civil Procedure, Bankruptcy, and Criminal Procedure. Ms.
25 Berzin has been recognized as a Super Lawyer (Rising Star). Ms. Berzin had over seven years of
26 experience working on civil litigation and employment law matters. Most of that experience had been
27 specific to analyzing and litigating wage and hour claims. As an associate, Ms. Berzin worked on a
28 variety of individual, class action, and PAGA cases involving wage and hour claims, such as failure to

1 pay overtime, failure to pay minimum wages, failure to provide meal and rest periods, failure to pay
2 reimbursement expenses, unlawful deductions, failure to keep accurate time records, failure to provide
3 paid sick leave, failure to pay all wages upon separation, unfair competition, breach of contract,
4 independent contractor misclassification, and salaried misclassifications. Some of the class action
5 and/or PAGA cases that Ms. Berzin litigated as lead or co-counsel include the following:

- 6 • *Arosemena v. Ranchhodrai, Inc., et al.*, Case No. STK-CV-UOE-2019-15963 (San Joaquin
7 Sup. Ct.);
- 8 • *Arroyo v. Epic Home Solar*, Case No. 34-2021-00310634 (Sac. Sup. Ct.);
- 9 • *Balli v. Brown Box Investments, Inc., et al.*, Case No. 34-2018-00232656 (Sac. Sup. Ct.);
- 10 • *Barkhousen, et al. v. Bank of Stockton*, Case No. STK-CV-UOE-2019-17145 (San Joaquin
11 Sup. Ct.);
- 12 • *Barrios v. American Property Management, Inc.*, Case No. 1:18-cv-00352-AWI-SKO (E.D.
13 Cal.);
- 14 • *Callahan v. Creative Alternatives, Inc., et al.*, Case No. 2027518 (Stanislaus Sup. Ct.);
- 15 • *Collazo v. T.O.P. Marketing Group, Inc.*, Case No. 34-2022-00314092 (Sac. Sup. Ct.);
- 16 • *Cristobal v. BAT Residential Services, Inc.*, Case No. FCS056331 (Solano Sup. Ct.);
- 17 • *Coronado v. MGD, Inc.*, Case No. STK-CV-UOE-2021-893 (San Joaquin Sup. Ct.);
- 18 • *Estrada v. MAD Security Services, Inc.*, Case No. 34-2021-00300627 (Sac. Sup. Ct.);
- 19 • *Ferreyra v. Point Digital Finance, Inc., et al.*, Case No. 20CV373776 (Santa Clara Sup. Ct.);
- 20 • *Finance of America Wage And Hour Cases*, Case No. JCCP 5081 (Orange County Sup. Ct.);
- 21 • *Gomez, et al. v. Kleary Masonry, Inc.*, Case No. 34-2020-00278067 (Sac. Sup. Ct.);
- 22 • *Gonzalez v. Northcentral Pizza, LLC, et. al.*, Case No. 34-2019-00252018 (Sac. Sup. Ct.);
- 23 • *Gordon, et al. v. Hospice Source, LLC*, Case No. 34-2019-00250022 (Sac. Sup. Ct.);
- 24 • *Green v. Warden Security Associates, Inc.*, Case No. 22CV396140 (Santa Clara Sup. Ct.);
- 25 • *Hampton v. Unlimited Security Specialists, Inc.*, Case No. CV2021-2130 (Yolo Sup. Ct.);
- 26 • *Hercules, et al. v. Maximus Services, LLC*, Case No. 34-2019-00268385 (Sac. Sup. Ct.);
- 27 • *Insixiengmay v. Hyatt Corporation*, Case No. 2:18-cv-02993-TLN-DB (E.D. Cal);
- 28 • *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.);
- *Vasquez v. Chriswell Home Improvements, Inc.*, Case No. 34-2021-00305938 (Sac. Sup. Ct.);
- *Villarruel, et al. v. General Produce Company, et al.*, Case No. 34-2021-00311463 (Sac. Sup. Ct.);
- *Walker v. Yan Kalika Dental Corporation*, Case No. 34-2021-00305106 (Sac. Sup. Ct.); and
- *Webb v. Professional Healthcare At Home, LLC*, Case No. FCS055317 (Solano Sup. Ct.).

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

1 21. My office is requesting attorneys' fees pursuant to the common fund doctrine pursuant
2 to *Laffitte v. Robert Half Internat., Inc.*, 1 Cal.5th 480, 506 (2016); *Paul, Johnson, Alston & Hunt v.*
3 *Grauly*, 886 F.2d 268, 271 (9th Cir. 1989); *Boeing Co. v. Van Gemert*, 444 U.S. 472, 477-478 (1980).
4 Plaintiff has been able to secure an identifiable benefit on behalf of the class and equity counsels that
5 the cost of the representation should be born equally amongst all class members receiving these
6 benefits. The settlement recovery provides a good result and is the product of substantial time and
7 effort in analyzing the facts and law applicable to this case. There was substantial risk in agreeing to
8 take this case on a contingency basis and as a class action with the possibility that our firm would not
9 receive any compensation our time and efforts due to issues regarding the merits and/or certification
10 and have carried that risk over the course of the case. In my experience, the attorney's fee request of
11 thirty-five percent (35%) of the common fund is within ranges typically approved in wage and hour
12 class action litigation. This includes awards in Sacramento County Superior Court. Moreover, in
13 November 2022, this Court approved a fee request of 35% and the same hourly rates for Mr. Shimoda,
14 Ms. Berzin, and myself, in connection with a motion for final approval of a wage and hour class action
15 settlement in *Strawn v. Bridgestone Retail Operations, LLC*, Case No. 34-2018-00242049 (Sac. Sup.
16 Ct.).

17 22. I believe a lodestar cross check supports finding a 35% fee award is appropriate in this
18 case. The total lodestar is approximately \$160,622.50 based on approximately 283.7 hours, which
19 includes an estimated 10 hours of time for myself and 10 hours for Mr. Konini in preparing for and
20 attending the final approval hearing, ensuring compliance and the disbursement of funds consistent
21 with a final approval order. I have reviewed our firm's billing records with Mr. Shimoda and Mr.
22 Konini and have created a summary chart showing the task categories and hours worked by each billing
23 attorney in each category. Ms. Berzin was no longer with our firm at the time this Motion was filed, so
24 I was not able to review with her. I independently reviewed her billing entries. A true and correct copy
25 of the summary chart is being filed with this Motion as Exhibit F. In reviewing the entries, I believe
26 the hours reported are accurate. To the extent we believe it appropriate to do so in any given
27 assignment, we attempt to assign tasks to the billing attorney with the lower rate in order to reduce
28 costs that otherwise might inhibit the likelihood a case will resolve. Our firm uses billing software,

which tracks the entries by day and time. Our billing software also records time in 1/10 of an hour increments. Our billing software also enables the use of a start/stop timer that can be used to more accurately record how long a particular task takes. A summary of the entries in Exhibit F by timekeeper is as follows:

<u>Timekeeper</u>	<u>Hours</u>	<u>Rate</u>	<u>Lodestar</u>
Galen T. Shimoda	64.9	\$725	\$47,052.5
Justin P. Rodriguez	102.9	\$625	\$64,312.50
Brittany V. Berzin	97.5	\$425	\$41,437.50
Renald Konini	18.4	\$425	\$7,820
Total:	283.7	--	\$160,622.50

23. I believe the requested rates are within the prevailing market rates for Sacramento County and elsewhere. Ms. Berzin, Mr. Konini, myself, and Mr. Shimoda have approximately 5 years, 8 years, 12 years, and 20 years of experience, respectively, litigating complex wage and hour class and PAGA actions. Again, this Court approved these rates for myself, Mr. Shimoda, and Ms. Berzin in November 2022. *See Strawn v. Bridgestone Retail Operations, LLC*, Case No. 34-2018-00242049 (Sac. Sup. Ct.). Mr. Konini was approved at these rates in connection with a wage and hour class action in Sacramento County Superior Court in January 2023. *See Kee, et al. v. Dr. Jeffrey A. Saladin, Dental Corporation (D/B/A Children's Choice Pediatric Dental Care), et al.*, Case No. 34-2020-00290072. Awarding fees at the hourly rate in effect at the time of the fee request is an appropriate and judicially approved method. *See Missouri v. Jenkins by Agyei*, 491 U.S. 274, 283 (1989). For the foregoing reasons, I believe the request of \$146,125 (35%) for attorneys' fees is justified given the results obtained on behalf of the class.

24. Although the Agreement set out a maximum of \$10,000.00 for potential attorney's costs, the total costs incurred or that will be incurred through a compliance hearing by Class Counsel is \$6,976.71. A true and correct copy of my firm's itemized costs incurred prior to the filing of this Motion and the expected costs incurred through the final approval and compliance hearings is attached

1 to this declaration as Exhibit D. The difference in the actual costs and the maximum amount allocated
2 under the Agreement will be added to the Net Settlement Amount and disbursed to Class Members.

3 25. I have used several class action administrator companies in the wage and hour class
4 actions I have resolved in the past and believe Apex Class Action will provide the best service to
5 administer the proposed class settlement. The CEO of Apex Class Action, Sean Hartranft, has worked
6 in the administration industry for a decade and utilizes case managers with considerable experience in
7 the field. Apex Class Action has procedures in place to protect the security of class data as well as
8 insurance. Under the settlement the difference between the originally allocated \$10,000, and the actual
9 administration costs of \$5,900 will be paid to the Class members on a pro rata basis.

10 26. A copy of the Agreement and the entire Motion was submitted to the LWDA for review
11 at the same time the Motion was submitted to the Court pursuant to California Labor Code section
12 2699(l)(2). A true and correct copy of documents demonstrating the settlement documents were
13 provided to the LWDA and that the LWDA has confirmed receipt are being filed with this Motion as
14 Exhibit E.

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

18 28. I have spoken with every other attorney at my firm to determine whether they have any
19 relationship with the proposed *cy pres* beneficiary. No attorney at my firm as done any work, volunteer
20 or otherwise with Sacramento Food Bank and Family Services. Neither my firm, myself, Mr. Shimoda,
21 Ms. Berzin, nor Mr. Konini have received any compensation, direct or indirect, for designating
22 Sacramento Food Bank and Family Services California as a *cy pres* beneficiary.

23 I declare under penalty of perjury under the laws of the State of California that the foregoing is
24 true and correct. Executed on July 12, 2024, in Sacramento, California.

25 
26 Justin P. Rodriguez
27
28

1 Galen T. Shimoda (Cal. State Bar No. 226752)
Justin P. Rodriguez (Cal. State Bar No. 278275)
2 Renald Konini (Cal. State Bar No. 312080)
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

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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.
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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

**DECLARATION OF MADELY NAVA OF
APEX CLASS ACTION, LLC, IN SUPPORT
OF MOTION FOR FINAL APPROVAL OF
CLASS ACTION SETTLEMENT**

Date: August 9, 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, Madely Nava, declare as follows:

2 1. I am a resident of the United States of America and am over the age of 18. I am a Case
3 Manager for Apex Class Action, LLC, (hereinafter referred to as “Apex”), the professional settlement
4 services provider who has been retained by the Parties’ Counsel and subsequently appointed by the
5 Court to serve as the Settlement Administrator for the above captioned *Martin v. Western Engineering*
6 *Contractors, Inc.*, matter. On behalf of both Apex and myself, I possess the authority to issue this
7 declaration. I am personally acquainted with the information contained herein, and in the event of being
8 summoned to provide testimony, I am fully capable and willing to provide competent testimony
9 regarding these facts.

10 2. Apex Class Action’s team has been directly involved with class action administration for a
11 combined 15 years and has successfully managed numerous class action cases during that time. Our team
12 comprises experienced professionals with extensive knowledge of class action settlement administration.
13 In addition, Apex Class Action has the necessary technology and infrastructure to efficiently manage large-
14 scale class action cases. We utilize state-of-the-art software and systems to ensure that all aspects of the
15 administration process are executed accurately and efficiently.

16 3. Apex was engaged by the Parties’ Counsel and subsequently approved and appointed by
17 the Court to provide notification services and claims administration, pursuant to the terms of the
18 Settlement, in the above-referenced Action. The responsibilities undertaken thus far, as well as those to
19 be fulfilled following the granting of Final Approval of the Settlement, include: (a) printing and mailing
20 the *Notice of Proposed Class Action and PAGA Settlement and Hearing Date for Final Court Approval*
21 *of Settlement*, in English and Spanish (referred to as “Notice Packet”); (b) receiving and processing
22 requests for exclusion; (c) resolving disputes among Class Members regarding the number of workweeks
23 recorded by Defendants during the Class Period, as stated on their individualized Notice Packet; (d)
24 calculating individual settlement award amounts; (e) processing and mailing settlement award checks;
25 (f) handling tax withholdings as required by the Settlement and the law; (g) preparing, issuing and filing
26 tax returns and other applicable tax forms; (h) managing the distribution of any unclaimed funds pursuant
27 to the terms of the Settlement; and (i) undertaking additional tasks as mutually agreed upon by the Parties
28 or as ordered by the Court for Apex to perform.

1 4. On April 3, 2024, Counsel for the Plaintiff provided Apex with the Court-approved
2 content for the Notice Packet. Apex then generated a draft of the formatted Notice Packet, which received
3 approval from the Parties' Counsel before being mailed.

4 5. On April 12, 2024, Counsel for the Defendants provided Apex with the class data file,
5 comprising the names, social security numbers, last known mailing addresses, and the total number of
6 relevant workweeks worked by each Class Member and Aggrieved Employee ("Class List"). The data
7 file was successfully uploaded to our database, where it underwent a thorough review to identify any
8 duplicates or potential inconsistencies. The data encompassed a total of 186 individuals.

9 6. In preparation for the mailing process, all 186 names and addresses listed in the Class
10 List underwent verification and updating against the National Change of Address (NCOA) database
11 maintained by the United States Postal Service (USPS). The purpose of this step was to ensure the
12 accuracy and validity of the Class Members' mailing addresses before sending out the Notice Packet.
13 The NCOA database contains records of requested address changes submitted to the USPS. If an updated
14 address was found in the NCOA database, it was utilized for the mailing of the Notice Packet. However,
15 in cases where no updated address was found in the NCOA database, the original address provided by
16 Counsel for Defendants was used for the mailing of the Notice Packet.

17 7. On April 26, 2024, The Notice Packet was sent to all 186 individuals listed in the Class
18 List using U.S First Class Mail. A copy of the mailed Notice Packet, which was sent in English and
19 Spanish, is attached hereto as **Exhibit A**. Before the mailing date, I integrated the formatted class notice
20 with the preliminary calculations, both of which had been previously reviewed and approved by the
21 parties. I then conducted a thorough review to ensure the accurate merging of all information before
22 proceeding with the printing process, confirming that each Class Member and/or Aggrieved Employee
23 on the Class List was accounted for in the mailing and the mailing was directed to the appropriate
24 address.

25 8. As of the date of this declaration, our office has received 9 returned Notice Packets as
26 undeliverable. Of the 9 returned Notice Packets, none were returned with a forwarding address.
27 Therefore, Apex conducted a computerized skip trace on the 9 returned Notice Packets in order to acquire
28 updated addresses for the purpose of re-mailing the Notice Packet. This skip trace effort resulted in

1 obtaining 5 updated addresses, to which we promptly re-mailed the Notice Packets via U.S First Class
2 Mail.

3 9. As of the date of this declaration, there have been 5 Notice Packets re-mailed as a result
4 of Apex's skip-tracing efforts.

5 10. As of the date of this declaration, 4 Notice Packets have been deemed undeliverable as
6 no updated address was found despite conducting skip tracing.

7 11. As of the date of this declaration, Apex has received 1 request for exclusion from Geraldo
8 Ponce Mercado. The deadline for submitting a request for exclusion from the Settlement was June 25,
9 2024.

10 12. As of the date of this declaration, Apex has not received any objections to the Settlement.
11 The deadline for submitting a written objection to the Settlement was June 25, 2024.

12 13. As of the date of this declaration, Apex will report 90 Participating Class Members,
13 constituting 98.90% of the total 91 Class Members.

14 14. The total number of workweeks worked by Participating Class Members during the Class
15 Period is 3,554. The Net Settlement Amount available to Participating Class Members is estimated to be
16 \$206,748.29 and was calculated by subtracting the requested attorneys' fees (\$146,125.00), the amount
17 requested for litigation costs and expenses (\$6,976.71), the requested Enhancement Payment
18 (\$10,000.00), the requested Settlement Administration Costs (\$5,900.00), and the PAGA Payment
19 (\$10,437.00) from the Gross Settlement Amount (\$417,500.00).

20 15. The *highest* Individual Settlement Amount to a Participating Class Member is currently
21 estimated to be approximately \$11,401.99, the *average* Individual Settlement Amount is currently
22 estimated to be approximately \$2,297.20. These amounts are subject to employee-side tax and
23 withholdings.

24 16. Pursuant to the Agreement, 25% of the PAGA Payment (\$10,437.50) will be allocated to
25 Aggrieved Employees regardless of whether they opt out of the class settlement. Aggrieved Employees
26 cannot opt out of the PAGA settlement. There are a total of 6,035 pay periods during the PAGA Period.

27 17. Apex's comprehensive fees and costs for administering this Settlement, covering both
28 incurred and anticipated expenses, amount to \$5,900.00. Apex will proceed with additional tasks related

1 to this matter, such as calculating settlement award payments, issuing and mailing settlement award
2 checks, handling necessary tax filings and reporting on these payments, and any other tasks mutually
3 agreed upon by the Parties or ordered by the Court for Apex to undertake.

4 I declare under penalty of perjury under the laws of the State of California and the United States
5 that the foregoing is true and correct, and that this Declaration was executed this 10th day of July 2024,
6 in Irvine, California.

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MADELY NAVA

Exhibit A

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 196 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 \$10,693.22. 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 March 6, 2024.

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.

A. 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 43 weeks during the applicable PAGA Claim Period, which means your share of the PAGA Payment is estimated to be \$74.37. 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 June 25, 2024. 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 June 25, 2024. 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.*, Case No. 34-2023-00334816); (d) be signed; and (e) be post-marked no later than June 25, 2024. The request to opt out must be mailed by First Class U.S. Mail, or the equivalent, to:

Apex Class Action, LLC
P.O. Box 54668
Irvine, CA 92619

If you submit a request to opt out which is not postmarked by June 25, 2024, 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 receive 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.*, Case No. 34-2023-00334816) (e) be signed; and (f) be post-marked no later than June 25, 2024. 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 VII 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 23, 720 9th Street Sacramento, California 95814, on August 9, 2024, at 9:00 a.m. 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/sscdept23>. To join by phone: (833) 568-8864 and ID 16108301121. 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: www.apexclassaction.com/westeng. 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
Renald Konini
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 (800) 355-0700

BY ORDER OF THE COURT

TRIBUNAL SUPERIOR DE CALIFORNIA
PARA EL CONDADO DE SACRAMENTO

MAURECE MARTIN, individualmente y en nombre
de todos los demás empleados en situaciones
similares,

Demandante,

vs.

WESTERN ENGINEERING CONTRACTORS,
INC., a California Corporation; y DOES 1 a 100,
inclusiva,

Demandados.

Caso No. 34-2023-00334816

**AVISO DE ACUERDO PROPUESTO DE
DEMANDA COLECTIVA Y ACUERDO PAGA,
Y FECHA DE AUDIENCIA PARA LA
APROBACIÓN FINAL DEL ACUERDO EN EL
TRIBUNAL**

ATENCIÓN: todos los empleados por horas no exentos que han trabajado o continúan trabajando para Western Engineering Contractors, Inc. en California, y que no firmaron un acuerdo de arbitraje con una renuncia a una demanda colectiva, desde el 15 de febrero del 2019 hasta el 8 de octubre del 2023 (los “Miembros del Grupo”) y todos los empleados por horas no exentos que han trabajado o continúan trabajando para Western Engineering Contractors, Inc. en California desde el 14 de febrero del 2022 hasta el 8 de octubre del 2023 (“Empleados Agraviados”).

POR FAVOR LEA ESTE AVISO DETENIDAMENTE. ESTE AVISO SE RELACIONA CON UNA PROPUESTA DE ACUERDO DE DEMANDA COLECTIVA Y LITIGIO PAGA Y EL POTENCIAL PAGO DE FONDOS DEL ACUERDO PARA USTED. SI USTED ES UN MIEMBRO DEL GRUPO, EL AVISO CONTIENE INFORMACIÓN IMPORTANTE SOBRE SU DERECHO A PARTICIPAR O EXCLUIRSE DEL ACUERDO SEGÚN LOS PROCEDIMIENTOS QUE SE DESCRIBEN A CONTINUACIÓN.

Usted está recibiendo este aviso de conformidad con una orden del Tribunal Superior del Condado de Sacramento ("Tribunal") que concede la moción del Demandante para la aprobación preliminar de una Estipulación Conjunta sobre el Acuerdo de Demanda Colectiva y el Acuerdo y Liberación PAGA ("Convenio" o "Acuerdo") como justo, razonable y adecuado. El Acuerdo se celebró entre el Demandante Maurece Martin (“Demandante” o “Representante del Grupo”) y el Demandado Western Engineering Contractors, Inc. (“Demandado”) en nombre de los Miembros del Grupo y los Empleados Agraviados como se define anteriormente. Los términos del Acuerdo se describen en el presente documento. Usted está recibiendo este aviso porque los registros del Demandado indican que usted se encuentra dentro de la definición de "Miembro del Grupo" y/o Empleado Agraviado. Los registros del Demandado también indican que usted trabajó 196 semanas durante el Período del Grupo aplicable y/o el Período PAGA (como se define a continuación), lo que significa que su parte total del pago del acuerdo se estima en \$10,693.22. Su pago actual del monto del acuerdo puede variar según el número total de Miembros del Grupo que elijan participar y la resolución de cualquier disputa sobre la semana laboral como se describe en este aviso.

Los términos del Acuerdo y una descripción del caso se identifican en este aviso. De conformidad con la orden del Tribunal, POR LA PRESENTE SE LE NOTIFICA LO SIGUIENTE:

I. ANTECEDENTES DEL CASO

El 15 de febrero del 2023, el Demandante presentó una Demanda contra el Demandado en el Tribunal Superior del Condado de Sacramento de California en su nombre y en el de los Miembros del Grupo. El término “Acción” significa esta supuesta demanda colectiva pendiente en el Tribunal Superior del Condado de Sacramento, Caso No. 34-2023-00334816. El Período del Grupo es desde el 15 de febrero del 2019 hasta el 8 de octubre de 2023 (el “Período del Grupo”). El 14 de febrero de 2023, el Demandante presentó un aviso de la Ley General del Fiscal General Privado (“PAGA”) ante la Agencia del Desarrollo de la Fuerza Laboral y, el 25 de mayo del 2023, el Demandante presentó una Primera Demanda Enmendada agregando una causa de Acción bajo la Ley del Fiscal General Privado en nombre del Demandante y de los Empleados Agraviados. El Período de Reclamación PAGA es desde el 14 de febrero del 2022 hasta el 8 de octubre del 2023 (el “Período de Reclamación PAGA”). El Demandante presentó un aviso PAGA enmendado el 5 de diciembre del 2023 y presentó una Segunda Demanda Enmendada el 6 de marzo del 2024.

En la Acción, el Demandante buscó obtener salarios impagos, intereses, gastos impagos, sanciones legales, sanciones civiles, honorarios y costos en su nombre, los Miembros del Grupo y los Empleados Agraviados alegando reclamaciones por falta de pago de salarios de horas extras, falta de pago salarios mínimos, violaciones del período de comida, violaciones del período de descanso, violaciones de la declaración de salarios, sanciones por tiempo de espera, falta de licencia por enfermedad remunerada, competencia desleal, violaciones de la Ley del Fiscal General Privado, falta de reembolso de gastos comerciales y falta de pago de vacaciones acumuladas. El Demandante alegó que el Demandado violó la ley de California al 1) no registrar ni mantener con precisión las horas trabajadas de los empleados; 2) no pagar todas las horas trabajadas, incluido el tiempo de viaje; 3) no autorizar ni permitir que los miembros putativos del grupo tomen todos los períodos de comida y descanso o paguen primas

en su lugar; 4) no incluir las fechas inclusivas del período de pago y los últimos 4 dígitos de los empleados de su número de seguro social o número de identificación de empleado en las declaraciones de salario emitidas a miembros putativos del grupo; 5) no incorporar el valor de los salarios prevalecientes en la licencia por enfermedad remunerada de los empleados y los salarios regulares a los efectos de calcular los salarios de horas extras en trabajos con salarios no prevalecientes; 6) no reembolsar el uso de teléfonos celulares personales y vehículos; y 7) no pagar el pago de vacaciones acumulado y no utilizado en absoluto o la tasa de pago regular final de un empleado en el momento de la separación. El Demandado ha negado todos los alegatos del Demandante. La Acción ha sido litigada activamente. Ha habido investigaciones en curso y ha habido un intercambio de documentación e información extensa. Además, las Partes han participado en una mediación de un día completo facilitada por una tercera parte neutral. Sobre la base de las negociaciones y de todos los hechos y circunstancias conocidos, incluidos los diversos riesgos e incertidumbres relacionados con las acciones legales, las Partes llegaron a un acuerdo colectivo. Al llegar a un acuerdo, las Partes evitarán los riesgos asociados con un largo proceso de litigio. A pesar de aceptar y apoyar el Acuerdo, el Demandado continúa negando todas las acusaciones y reclamos. El Demandado no admite ninguna responsabilidad ante el Demandante ni ante ningún otro empleado actual o anterior, y el Demandado no admite que se haya producido ninguna violación de los derechos del Demandante ni de los derechos de ningún otro empleado actual o anterior. El Tribunal no ha tomado ninguna determinación sobre si las reclamaciones presentadas por el Demandante tienen algún mérito.

El Demandado ha acordado entrar a este Acuerdo para resolver total, finalmente y para siempre esta Acción, con base en los términos establecidos en el Acuerdo, a fin de evitar la carga y los gastos asociados con el litigio en curso.

El Acuerdo se aplica a todos y cada uno de los Miembros del Grupo, que se definen como todos los empleados no exentos que han trabajado o continúan trabajando para el Demandado en California y que no firmaron un acuerdo de arbitraje con una renuncia a la demanda colectiva, desde el 15 de febrero del 2019 hasta el 8 de octubre del 2023. El Acuerdo también se aplica a los Empleados Agraviados, que se definen como todos los empleados por horas no exentos que han trabajado o continúan trabajando para el Demandado en California desde el 14 de febrero del 2022 hasta el 8 de octubre del 2023. Si es Miembro del Grupo, tiene la oportunidad de participar en el Acuerdo o de excluirse (“optar por no participar”) del Acuerdo. Este aviso es para informar a los Miembros del Grupo sobre cómo pueden participar en el Acuerdo o ser excluidos del mismo. Como se establece a continuación, los Empleados Agraviados no pueden optar por no participar en este Acuerdo en lo que se refiere al Pago PAGA o las Reclamaciones PAGA Liberadas, independientemente de si optan por no ser Miembros del Grupo. Los Empleados Agraviados recibirán su parte del pago PAGA independientemente de si optan por no ser Miembros del Grupo.

II. RESUMEN DEL ACUERDO PROPUESTO

A. El Monto del Acuerdo

Según los términos del Acuerdo, el Demandado acordó pagar una suma total de Cuatrocientos Diecisiete Mil Quinientos (\$417,500) (“Monto Bruto del Acuerdo”). Se deducirán de este Monto Bruto del Acuerdo las sumas aprobadas por el Tribunal para los honorarios de los abogados que no excedan el 35% del Monto Bruto del Acuerdo, los costos de los abogados que no excedan los \$10,000, los Costos del Administrador del Acuerdo estimados que no excedan los \$10,000, el Pago de Mejora del Representante del Grupo de \$10,000 y \$41,750 por supuestas multas PAGA (el “Pago PAGA”), lo que resultará en un “Monto Neto del Acuerdo” que se distribuirá a todos los Miembros del Grupo. Cualquier impuesto del empleador atribuible a los pagos asignados como salarios será pagado por el Demandado además del Monto Bruto del Acuerdo. Como se explica más adelante, el monto de la participación de cada Miembro del Grupo en el Monto Neto del Acuerdo dependerá del número de semanas trabajadas por los Miembros del Grupo participantes durante el Período del Grupo. De los \$41,750 asignados para resolver los reclamos PAGA, el 75% del Pago PAGA se pagará a la Agencia de Desarrollo Laboral y Laboral del Estado de California y el 25% del Pago PAGA se dividirá entre los Empleados Agraviados según el número de semanas laborales trabajadas durante el Período de Reclamación PAGA.

La cantidad de semanas que trabajó durante el Período del Grupo y su parte total estimada del Monto Neto del Acuerdo y el Pago PAGA (“Monto del Acuerdo Individual”) se indican en la primera página de este aviso. El monto real recibido puede ser mayor o menor que el monto indicado dependiendo del número real de semanas trabajadas por los Miembros del grupo participantes (es decir, aquellos que no optan por no participar en el Acuerdo), la resolución de cualquier disputa relacionada con las semanas laborales y la distribuciones finalmente aprobadas y asignadas por el Tribunal. Sin embargo, el hecho de que los Miembros del Grupo opten por no participar no tendrá ningún efecto en las asignaciones de los Empleados Agraviados para los reclamos PAGA.

B. Montos Individuales del Acuerdo y Asignación entre los Miembros del Grupo y los Empleados Agraviados

El Demandado pagará los Montos Individuales del Acuerdo a través del Administrador del Acuerdo, como se describe a continuación, a cada Miembro del Grupo Participante y a los Empleados Agraviados. Todos los Montos del Acuerdo Individual estarán sujetos a los impuestos correspondientes. Las Partes han acordado, con base en las alegaciones de la Acción, que todos los Montos del Acuerdo Individuales pagaderos a los Miembros elegibles del Grupo se asignarán del Monto Neto del Acuerdo y se pagarán como 2/3 por los intereses en disputa, sanciones legales y otros daños no salariales, para los cuales emitirán los Formularios 1099-MISC y 1099-INT del IRS y 1/3 para los salarios en disputa para los cuales emitirán los formularios W-2 del IRS. El pago PAGA a los Empleados Agraviados se pagará en un 100% por sanciones civiles.

El pago a los Miembros del Grupo participantes y a los Empleados Agraviados no requerirá la presentación de un formulario de reclamación. La participación de cada Miembro del Grupo Participante se determinará dividiendo el total de semanas trabajadas dentro del Período del Grupo por el total de semanas trabajadas por todos los Miembros del Grupo participantes dentro del Período del Grupo. Luego, esa fracción se multiplicará por el Monto Neto del Acuerdo para llegar a la participación individual del Miembro del Grupo en el Monto Neto del Acuerdo. La participación de cada Empleado Agraviado en la porción del 25% del Pago PAGA se determinará dividiendo el total de semanas trabajadas dentro del Período de Reclamación PAGA por el total de semanas trabajadas por todos los Empleados Agraviados dentro del Período de Reclamación

PAGA. Luego, esa fracción se multiplicará por la porción del 25% del Pago PAGA para llegar a la parte individual del Empleado Agraviado. El Período de Reclamación PAGA se define desde el 14 de febrero del 2022 hasta el 8 de octubre del 2023. Los registros del Demandado indican que usted trabajó 43 semanas durante el Período de Reclamación PAGA aplicable, lo que significa que su parte del Pago PAGA se estima en \$74.37. Este monto está incluido en el Monto del Acuerdo Individual estimado indicado en la primera página de este aviso, no además del mismo. Seguirá recibiendo su parte del pago PAGA incluso si opta por no ser Miembro del Grupo o no cumple con la definición de Miembro del Grupo. La recepción de los Montos Individuales del Acuerdo no dará derecho a ningún Miembro del Grupo o Empleado Agraviado a compensación o beneficios adicionales bajo ningún plan o acuerdo de compensación, jubilación o beneficios vigente durante el período cubierto por el Acuerdo.

C. Los Cálculos se Basarán en los Registros del Demandado y la Resolución de Disputas sobre la Semana Laboral

Para cada Miembro del Grupo, el Administrador del Acuerdo calculará el monto a pagar a partir de los registros del Demandado. Se presumirá que los registros del Demandado son correctos a menos que se proporcione evidencia de lo contrario al Administrador del Acuerdo. El Administrador del Acuerdo revisará los registros del Demandado y cualquier evidencia adicional en caso de una disputa sobre el número de semanas laborales trabajadas por un Miembro Individual del Grupo o un Empleado Agraviado. Si un Miembro del Grupo o un Empleado Agraviado cuestiona la exactitud de los registros del Demandado, todos los documentos de respaldo que demuestren semanas laborales adicionales deben ser presentados por el Miembro del Grupo o el Empleado Agraviado. La disputa debe (a) identificar la naturaleza de la disputa; (b) proporcionar cualquier información o documentación que respalde la disputa; (c) estar firmado; y (d) tener matasellos a más tardar el 25 de junio del 2024. La disputa será resuelta por el Administrador del Acuerdo sobre la base de los registros y las pruebas proporcionadas.

D. Liberación de Reclamaciones

Para aquellos Miembros del Grupo que no optan por no participar y los Empleados Agraviados, el Acuerdo contiene las siguientes exenciones:

Se considerará que los Miembros del Grupo que no opten por no participar han renunciado a todos y cada uno de los reclamos alegados en la Demanda operativa, y cualquier reclamo adicional de salarios y horas que podría haberse presentado con base en los hechos alegados en la Demanda operativa, a través del Período del Grupo. Esta exención incluye, entre otros, reclamos por (1) falta de pago de salarios por horas extras (Código Laboral de CA §§ 510, 558, 558.1, 1194, 1815 y Orden Salarial 16, § 3); (2) falta de pago de salarios mínimos (Código Laboral de California § 1194, 1194.2, 1197.1 y Orden Salarial 16 § 4); (3) violaciones del período de comida (Código Laboral de California §§ 226.7, 512 y Orden Salarial 16 § 11(A), (B)); (4) violaciones del período de descanso (Código Laboral de California § 226.7 y Orden Salarial 16 § 12(A)); (5) sanciones en las declaraciones de salario (Código Laboral de CA §§ 226, 226.3, 1174, 1815, 1198 y Orden Salarial 16, § 6(A)); (6) sanciones por tiempo de espera (Código Laboral de California §§ 201-203, 256); (7) No proporcionar licencia por enfermedad remunerada (Código Laboral de California §§ 246, 246.5, 248.5); (8) competencia desleal (Código de Negocios y Profesiones de CA § 17200, et seq.); (9) Ley del Fiscal General Privado, (10) Falta de Reembolso de Gastos Comerciales (Código Laboral de California § 2802); y (11) Falta de pago de las vacaciones acumuladas (Código Laboral de CA § 227.3). Esta liberación excluye la liberación de reclamos no permitidos por la ley. Esta autorización cubrirá a todos los Miembros del Grupo que no opten por no participar.

Se considerará que los Empleados Agraviados han liberado todos y cada uno de los reclamos por sanciones civiles que se presentaron bajo la Ley del Fiscal General Privado, Código Laboral §§ 2698 *et seq.*, contenidos en la Demanda operativa del Demandante, las cartas PAGA del Demandante a la Agencia de Desarrollo de la Fuerza Laboral y cualquier reclamo adicional de salario y horas PAGA que podría haberse presentado con base en los hechos alegados en la Demanda operativa y las cartas de PAGA durante el Período de Reclamaciones PAGA. Esta exención incluye, entre otros, reclamos por (1) Falta de Pago de Salarios por Horas Extras (Código Laboral de California §§ 510, 1194, 1815; Orden Salarial IWC 16, § 3); (2) Falta de Pago del Salario Mínimo (Código Laboral de California §§ 1194, 1197.1, Orden salarial 16 de la IWC, §4); (3) No Proporcionar Períodos de Comida o Pagar Primas en Lugar de los Mismos (Código Laboral de California §§ 226.7, 512 y Orden salarial 16, § 11(A), (B)); (4) No Proporcionar Descansos o Pagar Primas en Lugar de los Mismos (Código Laboral de CA § 226.7 y Orden salarial 16 de la IWC, § 12(A)); (5) No Proporcionar Declaraciones de Salarios Precisas (Código Laboral de CA §§ 226, 226.3 (6) Falta de Pago del Salario Final (Código Laboral de CA §§ 201-203, 256) (7) Violación de las Disposiciones que Regulan las Horas y Días de Trabajo en cualquier Orden de la Comisión de Bienestar Industrial (Código Laboral de CA §§ 558, 558.1); , 1193.6, 2802); (8) No Mantener Registros Precisos (Código Laboral de California §§ 226.3, 1174, 1815, 1198 y Orden salarial de la IWC 16, § 6(A)); (9) No Proveer Licencia por Enfermedad Remunerada (Código Laboral de CA §§ 246, 246.5, 248.5); (10) Falta de Reembolso de Gastos Comerciales (Código Laboral de CA § 2802) y (11) Falta de Pago de Vacaciones Acumuladas (Código Laboral de CA § 227.3); Los Empleados Agraviados no pueden optar por no participar en esta exención de reclamaciones.

Las partes liberadas (“Partes Liberadas”) incluyen al Demandado, así como a los funcionarios, accionistas, directores, agentes, empleados, abogados y aseguradores actuales y anteriores del Demandado, incluidos, entre otros, Don J. Carroll, Theresa W. Carroll, Lyndsey C. Gregory y Josh Wertz.

Los Miembros del Grupo y/o los Empleados Agraviados pueden hablar con el Administrador del Acuerdo aprobado por el Tribunal, Apex Class Action, si tienen alguna pregunta.

III. ¿CUALES SON SUS DERECHOS COMO MIEMBRO DEL GRUPO?

A. Participar en el Acuerdo como Miembro del Grupo

Si usted desea ser Miembro Participante del Grupo y cree que la información de su semana laboral es precisa, **no necesita tomar ninguna medida adicional**. El pago se le realizará automáticamente de conformidad con los términos del Acuerdo y la Orden del Tribunal. Si desea disputar

el cálculo de la semana laboral, puede seguir los procedimientos descritos en la Sección II.C anterior. La ley de California protege a los Miembros del Grupo contra represalias basadas en su decisión de participar en el Acuerdo.

B. Excluirse del Acuerdo como Miembro del Grupo

El Tribunal lo excluirá de ser Miembro del Grupo si lo solicita antes del 25 de junio del 2024. Si no desea estar sujeto al Acuerdo como Miembro del Grupo, puede solicitar ser excluido (es decir, “optar por no participar”) presentando una solicitud por escrito oportuna al Administrador del Acuerdo. La solicitud de exclusión voluntaria debe (a) indicar su nombre completo y fecha de nacimiento; (b) una declaración de que usted no desea ser Miembro del Grupo, no desea participar en el Acuerdo y/o desea ser excluido de este Acuerdo; (c) identificar el nombre y el número del caso (es decir, Martin v. Western Engineering Contractors, Inc., Caso No. 34-2023-00334816); (d) estar firmado; y (e) tener matasellos a más tardar el 25 de junio del 2024. La solicitud de exclusión voluntaria debe enviarse por correo postal estadounidense de primera clase, o su equivalente, a:

Apex Class Action, LLC
P.O. Box 54668
Irvine, CA 92619

Si usted envía una solicitud de exclusión que no tenga matasellos a más tardar del 25 de junio del 2024, su solicitud de exclusión será rechazada y usted estará obligado por la exención y todos los demás términos del Acuerdo. No utilice un medidor de envío, ya que es posible que no aparezca un matasello en el sobre que contiene su solicitud de exclusión voluntaria. Cualquier Miembro del Grupo que presente una solicitud completa y oportuna para optar por no participar, al recibirla el Administrador del Acuerdo, dejará de ser Miembro del Grupo y no recibirá su parte del Monto Neto del Acuerdo. Los Empleados Agraviados no pueden optar por no participar en este Acuerdo y recibirán su parte del pago PAGA independientemente de si optan por no ser Miembros del Grupo.

C. Objetar el Acuerdo

Si usted no opta por no participar en el Acuerdo, puede oponerse a los términos del Acuerdo. Sin embargo, si el Tribunal rechaza su objeción, usted seguirá obligado por los términos del Acuerdo. Puede pedirle al Tribunal que niegue la aprobación presentando una objeción. Usted no puede pedirle al Tribunal que ordene un Acuerdo mayor; el Tribunal sólo puede aprobar o rechazar el Acuerdo. Si el Tribunal niega la aprobación, no se enviará ningún pago del acuerdo y la demanda continuará. La objeción debe (a) indicar su nombre completo y fecha de nacimiento; (b) proporcionar evidencia de que usted es, de hecho, un Miembro del Grupo; (c) indicar los motivos de la(s) objeción(es), incluida la documentación de respaldo; (d) identificar el nombre y el número del caso (es decir, Martin v. Western Engineering Contractors, Inc., Caso No. 34-2023-00334816) (e) estar firmado; y (f) tener matasellos a más tardar el 25 de junio del 2024. La objeción debe enviarse al Administrador del Acuerdo a la dirección identificada en la Sección III.B y a los abogados del Demandante y el Demandado a las direcciones identificadas en la Sección VII de este aviso.

Usted también podrá presentarse en la audiencia de aprobación final para expresar su objeción. Cualquier Miembro del Grupo que no solicite la exclusión puede, si así lo desea, comparecer a través de un abogado. Si se presenta a través de su propio abogado, usted es responsable de pagarle. También debe presentar un aviso de intención de comparecer ante el tribunal y entregar el aviso a los abogados del Demandante y el Demandado.

IV. EFFECTO DEL ACUERDO: DERECHOS Y RECLAMACIONES LIBERADAS

Si el Tribunal concede la aprobación final del Acuerdo, el Tribunal emitirá y dictará sentencia consistente con ello. La sentencia, sea favorable o no, vinculará a todos los Miembros del Grupo que no soliciten la exclusión. Después de la aprobación final, todos y cada uno de los Miembros del Grupo que no opten por no participar en el Acuerdo y todos y cada uno de los Empleados Agraviados liberarán al Demandado y a las Partes Liberadas de las Reclamaciones Colectivas Liberadas y de las Reclamaciones PAGA Liberadas descritas anteriormente. En otras palabras, si usted fue empleado como Miembro del Grupo por el Demandado en California durante el Período del Grupo y no se excluye del Acuerdo, se considerará que ha aceptado estas exenciones y que ha renunciado a los reclamos descritos anteriormente. Además, se le prohibirá demandar al Demandado y a las Partes Liberadas con respecto a los reclamos cubiertos por este Acuerdo. Si el Tribunal no aprueba el Acuerdo o no se vuelve definitivo por algún otro motivo, el litigio continuará.

V. AUDIENCIA DE APROBACIÓN FINAL DEL ACUERDO

El Tribunal celebrará una audiencia en Department 23, 720 9th Street Sacramento, California 95814, el 9 de agosto del 2024, a las 9:00 a.m. para determinar si el Acuerdo debe aprobarse finalmente como justo, razonable y adecuado. Para unirse mediante el enlace de Zoom: <https://saccourt-ca-gov.zoomgov.com/my/sscdept23>. Para unirse por teléfono: (833) 568-8864 e ID: 16108301121. También se le pedirá al Tribunal que apruebe la solicitud de los Abogados del Grupo de honorarios y costos de abogados, los Costos del Administrador del Acuerdo y el Pago de Mejora del Representante del Grupo. La audiencia podrá continuar sin previo aviso. No es necesario que usted se presente a esta audiencia.

VI. CHEQUES DEL ACUERDO

Los cheques del acuerdo serán nulos y sin efecto 180 días después de su emisión si no se depositan o cobran. Cualquier cheque no negociado dentro de los 180 días posteriores a su emisión se distribuirá al Sacramento Food Bank and Family Services. Si su cheque se pierde o se extravía, debe comunicarse con el Administrador del Acuerdo de inmediato para solicitar un reemplazo.

VII. INFORMACIÓN ADICIONAL

Usted puede acceder a la Demanda, la moción de aprobación preliminar de los Abogados del Grupo, el Acuerdo y cualquier otro documento requerido por el Tribunal en el sitio web del Administrador del Acuerdo: www.apexclassaction.com/westeng. Si se otorga la aprobación final, un aviso de emisión de la orden y una copia de la orden estarán disponibles en el sitio web de Acceso Público a Casos del Tribunal: <https://services.saccourt.ca.gov/PublicCaseAccess/>. También puede comunicarse con los Abogados del Grupo o los Abogados del Demandado de la siguiente manera:

Galen T. Shimoda
Justin P. Rodriguez
Renald Konini
Shimoda & Rodriguez Law, PC
9401 East Stockton Blvd., Suite 120
Elk Grove, CA 95624
Teléfono: (916) 525-0716
En nombre del Demandante

Carrie E. Bushman
Cook Brown LLP
2407 J Street Second Floor
Sacramento, CA 95816
Teléfono: 916-442-3100
En nombre del Demandado

POR FAVOR, NO LLAME POR TELÉFONO AL TRIBUNAL NI A LA OFICINA DEL SECRETARIO DEL TRIBUNAL PARA CONSULTAR SOBRE ESTE ACUERDO O EL PROCESO DE RECLAMACIÓN. SI USTED TIENE ALGUNA PREGUNTA, POR FAVOR LLAME AL (800) 355-0700

POR ORDEN DEL TRIBUNAL

Galen T. Shimoda (Cal. State Bar No. 226752)
Justin P. Rodriguez (Cal. State Bar No. 278275)
Renald Konini (Cal. State Bar No. 312080)
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

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

Date: August 9, 2024

Time: 9:00 a.m.

Dept.: 23

Judge: Hon. Jill Talley

Filed: February 15, 2023

FAC Filed: May 25, 2023

SAC Filed: March 6, 2024

Trial Date: None set

<u>EXHIBIT</u>	<u>DESCRIPTION</u>
A	Joint Stipulation Regarding Class Action and PAGA Settlement and Release
B	Plaintiff's Operative Complaint
C	Plaintiff's Letter to the LWDA Regarding PAGA Claims
D	Plaintiff's Itemized Costs
E	Proof of Submission to LWDA
F	Summary Chart of Plaintiff's Counsel's Hours

Dated: July 12, 2024

Shimoda & Rodriguez Law, PC

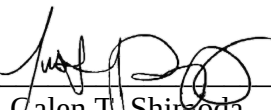
By: 
 Galen T. Shimoda
 Justin P. Rodriguez
 Renald Konini
 Attorneys for Plaintiff

Exhibit A

Galen T. Shimoda (Cal. State Bar No. 226752)
Justin P. Rodriguez (Cal. State Bar No. 278275)
Brittany V. Berzin (Cal. State Bar No. 325121)
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9401 East Stockton Blvd., Suite 120
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Carrie E. Bushman (Cal. State Bar No. 186130)
Cook Brown LLP
2407 J Street Second Floor
Sacramento, California 95816
Phone: (916) 442-3100
Fax: (916) 442-4227

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

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

17 1.9 "Complaint" means the operative Complaint on file in the Action with the Court.

18 1.10 "Court" means the Sacramento County Superior Court.

19 1.11 "Defendant" means Western Engineering Contractors, Inc..

20 1.12 "Defendant's Counsel" means Cook Brown LLP.

21 1.13 "Enhancement Payment" means the amount approved by the Court to be paid to the Class
22 Representative in recognition of the time and effort expended on behalf of Class Members for the benefit
23 of Class Members, which is in addition to any Individual Settlement Amount paid to the Class
24 Representative as a Participating Class Member.

25 1.14 "Effective Date" means the Final Approval Date unless there is a timely objection lodged
26 that has not later been withdrawn, in which case the Effective Date will be either (a) the 60th calendar day
27 after a signed order approving this settlement has been filed provided no appellate proceeding having been
28 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, weeks 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

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

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

13 9.1.2 Defendant shall not oppose Plaintiff's motion for approval of the proposed
14 Agreement.

15 9.1.3 The Parties shall cooperate with each other and the Settlement Administrator during
16 the process of giving Class Members notice and opportunity to object to the Agreement, as necessary and
17 appropriate to assure effective communication to individual Class Members of information about their
18 rights and obligations under this Agreement.

19 9.2 Final Approval and Fairness Hearing: On a date approved by the Court and set forth in the
20 Notice of Settlement, the Court shall hold the Final Approval and Fairness Hearing where objections, if
21 any, may be heard. Class Counsel shall provide the Court as part of the motion for final approval of the
22 Agreement, a declaration by the Settlement Administrator of due diligence and proof of mailing of the
23 Notice of Settlement required to be mailed to Class Members by this Agreement, and of the delivery results
24 of the Settlement Administrator's mailings including tracing and re-mailing efforts. The Settlement
25 Administrator declaration shall identify, by name, any Class Member who submitted a timely and valid
26 request to opt out during the Notice Period.

27 9.2.1 Class Counsel and Defendant shall work in good faith to draft a mutually agreeable
28 Proposed Order Granting Final Approval of Class Action and PAGA Settlement and Final Judgment. The

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

8 9.2.2 Following entry of the Court's order granting final approval of the Agreement, the
9 Parties will each act to ensure the fulfillment of all its provisions, including but not limited to the following:
10 1) Should an appeal be taken from the final approval of the Agreement or motion to set aside the judgement
11 be filed, all parties will support the final approval order on appeal or otherwise; 2) Class Counsel will assist
12 the Settlement Administrator as needed or requested in the process of identifying and locating Participating
13 Class Members and Aggrieved Employees entitled to payments under the Agreement and assuring delivery
14 of such payments; 3) Class Counsel and Defendant's Counsel will cooperate with each other and assist the
15 Settlement Administrator as needed or requested in completing the distribution of any residual amounts, as
16 specified above, to the *cy pres* beneficiaries; 4) Class Counsel, in conjunction with the Settlement
17 Administrator, will certify to the Court completion of all payments required to be made by this Agreement.

18 9.3 Final Judgment: If the Court approves this Agreement at the final approval and fairness
19 hearing, the Parties will request that the Court enter an Order Granting Final Approval of Class Action and
20 PAGA Settlement and Final Judgment.

21 9.4 Notice to LWDA: Plaintiff will provide notice to the Labor and Workforce Development
22 Agency ("LWDA") of this settlement in accordance with Labor Code § 2699(1)(2).

23 **10. MISCELLANEOUS TERMS**

24 10.1 Defendant's Right to Withdraw Based on Opt-Outs: If, prior to the Final Approval Date,
25 10% or more of the Class Members have submitted proper and timely requests to opt-out in accordance
26 with the provisions of the Agreement, Defendant may rescind the Agreement and all actions taken in its
27 furtherance will be thereby null and void. Defendant must exercise this right of rescission, in writing, to
28 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.

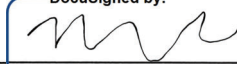
20 10.23 Waiver of Compliance: No waiver of any condition or covenant contained in this
21 Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply
22 or constitute a further waiver by such party of the same or any other condition, covenant, right or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

For Plaintiff:

Date: 3/4/2024

DocuSigned by:



Maurece Martin

1E665F92F7E74CB...

For Defendant:

Date: 3-4-24



By:

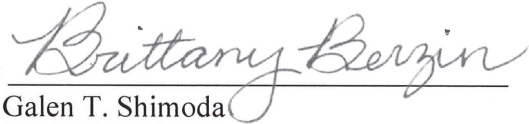
For Western Engineering Contractors, Inc.

APPROVED AS TO FORM

Shimoda & Rodriguez Law, PC

Dated: 3/4/2024

By:



Galen T. Shimoda

Justin P. Rodriguez

Brittany V. Berzin

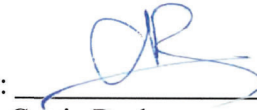
Attorneys for Plaintiff and Aggrieved
Employees

APPROVED AS TO FORM

COOK BROWN LLP

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].

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 B

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
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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

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.

//

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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28 //

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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;

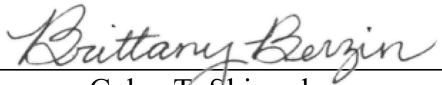
25 10. For such other and further relief as this Court may deem just and proper,
26 including, but not limited to:

- 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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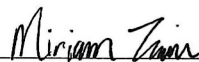
15 [] [By Certified Mail] I am familiar with my employer's practice for the collection
16 and processing of correspondence for mailing with the United States Postal
17 Service and that each day's mail is deposited with the United States Postal
18 Service that same day in the ordinary course of business. 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

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.

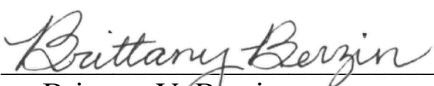
Count Elevent – Violation of Labor Code § 227.3 (Failure to Pay Accrued Vacation)

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	

16

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.

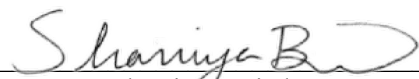
28 
Shaniya Baird

Exhibit D

Date	Description	Amount
2/13/2023	PAGA Filing Fee	\$75.00
2/13/2023	Certified Mail - PAGA Letter	\$47.40
2/27/2023	One Legal Fee - File Complaint and pay Complex Fee	\$1,556.09
3/9/2023	Administration/Copy Fee - Class Action - Phone, Fax, Scan, Copying, Westlaw Legal Research	\$500.00
5/26/2023	Mediator Fees	\$3,375.00
6/1/2023	One Legal Fee - Amended Complaint	\$78.76
10/17/2023	Mediator Remaining Fees	\$960.00
11/29/2023	Certified Mail - Amended PAGA Letter	\$43.85
12/6/2023	Certified Mail - Second Amended PAGA Letter	\$43.85
1/22/2024	One Legal Fee - Joint CMC	\$16.88
2/13/2024	One Legal Fee - Stip and Order to file Second Amended Complaint	\$37.47
3/6/2024	One Legal Service Fee - File PAM	\$78.65
3/7/2024	One Legal Service Fee - Amended Complaint	\$16.88
3/20/2024	One Legal Service Fee - Notice of Disassociation	\$16.88
Anticipated	One Legal Fee - File FAM	\$100.00
Anticipated	One Legal Fee - Compliance Declarations	\$30.00

TOTAL: \$6,976.71

Exhibit E

Exhibit F

TASK CATEGORY	GTS	JPR	BVB	RK
<u>Pre-filing investigation, Pleadings, Admin Exhaustion, and Related Law & Motion.</u> Includes time spent during initial client meetings and review of claims and documents; Pre-filing investigation/research; Review of payroll records and prior filings against Defendant; Drafting pleadings, notices, administrative filings; Reviewing and responding to pleadings and court filings; Communications with opposing counsel regarding same, internal communications regarding same, and communications with client regarding same;	18.2	8.4	10.3	-
<u>Case Review, Management, Strategy Meetings, Dispositive Motions.</u> Includes time spent discussing general plan of action updates and strategies in weekly meetings; Research and analysis regarding claim elements and issues affecting representative litigation; Preparing for case management conferences and related meet/confer, drafting of statements, and attendance for hearings; Reviewing minute orders and general correspondence from the Court regarding case management and assignments; Research regarding motion for certification; Research regarding trial plan issues; Communications with opposing counsel regarding same, internal communications at SRL regarding same, communications with client regarding same.	16.3	13.9	3.7	-
<u>Discovery (Pre-Mediation/Non-Mediation Related), Related Law & Motion, and Hearings.</u> Includes time spent preparing discovery requests, Belaire Notices, and Protective Order; Research regarding discovery issues and objections; Document review and analysis; Seek out witnesses for interviews and obtaining declarations; Review public records requests regarding prior labor commissioner filings and prior wage and hour lawsuits and/or administrative complaints; Communications with opposing counsel regarding same, internal communications at SRL regarding same, communications with client regarding same.	4.6	4.5	6.8	-
<u>Discovery / Investigation for Mediation.</u> Includes time spent preparing informal discovery specifically geared towards mediation; reviewing informal mediation productions, including data, analyses, documents, and public records; Analyzing data sample and performing damages analysis; Communications with opposing counsel regarding same, internal communications at SRL regarding same, communications with client regarding same.	7.4	26.7	39	-
<u>Mediation / Settlement Conference / Direct Negotiations.</u> Includes time spent drafting/revising mediation brief and accompanying exhibits; Drafting pocket brief; Review documents productions for potential exhibits; Preparing for and attending mediation; Pre-mediation calls with mediator; Legal research relating to issues on day of mediation; Preparing working draft of MOU; Communications with opposing counsel regarding same, internal communications at SRL regarding same, communications with client regarding same.	4.3	12.4	16	-
<u>Drafting Settlement Agreements.</u> Includes time spent preparing long form agreement and exhibits, revisions relating thereto; Research regarding any approval procedures and Court approval guidelines or issues regarding disputed terms; Solicit and review settlement administrator bids; Communications with opposing counsel regarding same, internal communications at SRL regarding same, communications with client regarding same.	5.9	8.9	12.2	-
<u>Settlement Approval and Administration.</u> Includes time spent drafting motion for preliminary approval and supporting declarations and order; Class data and settlement calculation review; Speaking with Settlement Administrator regarding calculations, distributions, and final approval logistics; Pull filings for web address access and confirm all required filings posted; Review/revise class notice to conform with Court's orders; Review reports from Settlement Administrator; Respond to Class Member calls and inquiries regarding the settlement; Draft Motion for Final Approval and supporting declarations, review and finalize exhibits relating thereto; Legal research regarding approval issues. Communications with opposing counsel regarding same, internal communications at SRL regarding same, communications with client regarding same. Includes estimated 10 hours for J. Rodriguez and 10 hours for R. Konini supervising final distributions and compliance with Court final approval order and attending compliance hearings.	8.2	28.1	9.5	18.4
TOTAL:	64.9	102.9	97.5	18.4

Galen T. Shimoda (Cal. State Bar No. 226752)
Justin P. Rodriguez (Cal. State Bar No. 278275)
Renald Konini (Cal. State Bar No. 312080)
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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 FINAL
APPROVAL OF CLASS ACTION AND PAGA
SETTLEMENT**

Date: August 9, 2024

Time: 9:00 a.m.

Dept.: 23

Judge: Hon. Jill Talley

Filed: February 15, 2023

FAC Filed: May 25, 2023

SAC Filed: March 6, 2024

Trial Date: None set

1 TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:

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

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

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

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

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. A Class Member shall not include the one (1) individual who timely opted out of the class
6 settlement: Geraldo Ponce Mercado. This individual shall not be bound by the Agreement or any of the
7 releases or obligations therein except for the releases and covenants regarding to the PAGA claims as
8 there is no ability to opt out of a PAGA settlement for Aggrieved Employees.

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

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

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

7 **II. APPROVING CLASS ACTION AND PAGA SETTLEMENT**

8 The Court has again reviewed the Agreement, which was submitted with Plaintiff's Motion as
9 Exhibit A. The Court finds, that final approval is warranted as the Agreement falls within the range of
10 reasonableness and is fair, reasonable, and adequate for the class. The Court also finds the Settlement
11 was agreed upon only after extensive investigation, litigation, and arms-length negotiations by counsel
12 experienced in complex litigation, who took reasonable steps and measures to weigh the potential value
13 of the disputed claims against the risks of continued litigation. Class Members were able to object to the
14 Agreement and its terms through the administration process and at a fairness hearing or opt-out of being
15 bound by the preliminarily approved Agreement.

16 No objections were made by Class Members and only one (1) Class Member opted out of the
17 settlement. Because the Court finds the Parties' settlement to have been agreed upon only after an
18 extensive investigation and arms-length negotiations, and in an attempt to avoid further delays and costs.
19 The Court gives final approval to the Agreement and all terms therein as if stated here in full, including
20 the \$417,500 Gross Settlement Amount.

21 The Court approves of the Forty-One Thousand Seven Hundred Fifty Dollars \$41,750 PAGA
22 Payment, which shall be paid from the Gross Settlement Amount, not in addition to the Gross Settlement
23 Amount, to resolve the alleged PAGA claims. Seventy-Five percent (75%) of the PAGA Payment will
24 be paid to the Labor and Workforce Development Agency ("LWDA") and twenty-Five percent (25%)
25 will be paid to Aggrieved Employees on a pro rata basis as described in the Agreement. The Court also
26 finds that, based on the facts of this case and the disputed issues, the PAGA Payment provides a
27 recovery that creates an effective, substantial deterrent to any potential future non-compliance,
28 furthering the purpose of the Labor Code and LWDA.

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

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

9 Class Counsel sought an award of attorney's fees of \$146,125, attorney's costs of \$6,976.71, an
10 Enhancement Payment to the Class Representative in the amount of \$10,000, and for Settlement
11 Administrator Costs in the amount of \$5,900. Defendant does not oppose these requests. The Notice of
12 Settlement sent to Class Members included information regarding these amounts and that they would be
13 requested in connection with final approval of the Agreement. Class Members have been given the
14 opportunity to object to these amounts and no objections have been submitted in any respect whatsoever.
15 The Court has reviewed the evidence submitted by Class Counsel regarding their hourly rates, including
16 prior fee awards in Sacramento County Superior Court at the requested rates, and the amount of time
17 expended in litigation for the benefit of Class Members. The Court finds that the rates requested and
18 hours expended are reasonable. The Court has also reviewed the updated itemized costs submitted by
19 Class Counsel, the information provided by the Class Representative regarding the efforts and burdens
20 undertaken for the benefit of the class, and the cost information provided by the Settlement
21 Administrator. The Court finds that these amounts are fair, reasonable, and supported by the evidence
22 submitted by Class Counsel. The requested amounts are approved and awarded as requested, which will
23 be deducted from the Gross Settlement Amount. This finding is further supported by the lack of
24 objections by Class Members to these amounts. The difference between the actual attorney's costs and
25 Settlement Administrator Costs awarded and the originally allocated \$10,000 for each payment will be
26 added to the Net Settlement Amount pursuant to the terms of the Agreement.

27 **III. APPROVAL OF THE DISTRIBUTION METHOD OF NOTICE TO THE CLASS,**
28 **INCLUDING THE NOTICE OF SETTLEMENT**

The Court finds that the preliminarily approved Notice of Settlement and procedures used to notify Class Members as set forth in the Declaration of Madely Nava fairly and adequately advised Class Members of the terms of the Agreement, the rights being waived, their right to opt out, the ability to dispute the number of workweeks worked during the Class Period, their pro rata share of the Net Settlement Amount, how to participate in the settlement, how to file documentation in opposition to the proposed settlement, and when to appear at the fairness hearing. The Court further finds that the Notice of Settlement and distribution of such notice by first class mail to each identified Class Member at his or her most recent address based on a National Change of Address database search from the Class Members' last known address and a skip trace on any Class Members who have the Notice of Settlement returned as "undeliverable" or "not at this address" comported with all constitutional requirements, including those of due process.

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 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

IT IS FURTHER ORDERED that this final approval order is effective as a judgment with each party to bear its own fees and costs outside of what has been ordered herein. This matter is subject to the Court's continuing jurisdiction to monitor and enforce the terms of this order and the approved Agreement.

IT IS SO ORDERED.

Date: _____

By: _____
Judge of the Superior Court